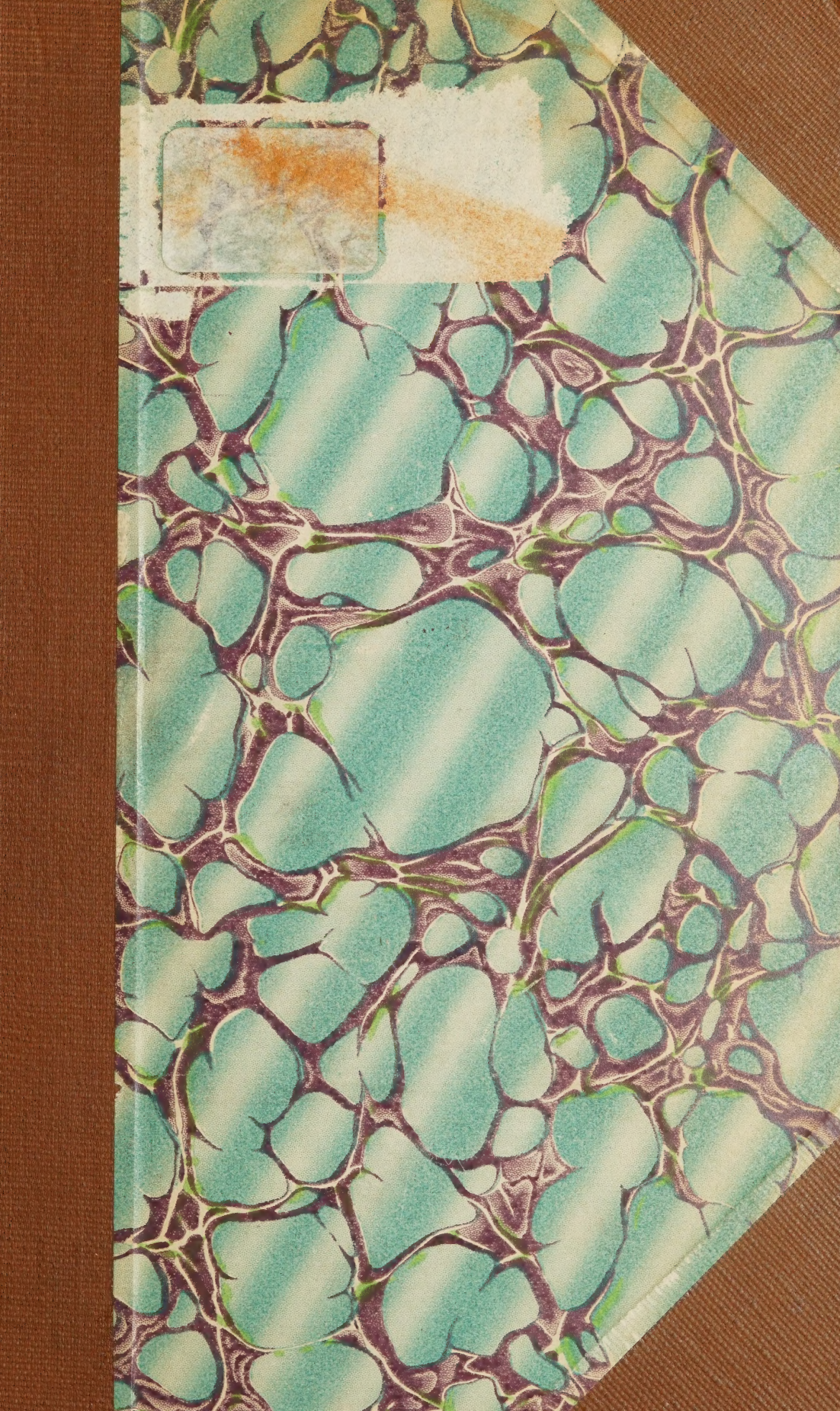



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# THE

# CONSOLIDATED STATUTES

OF

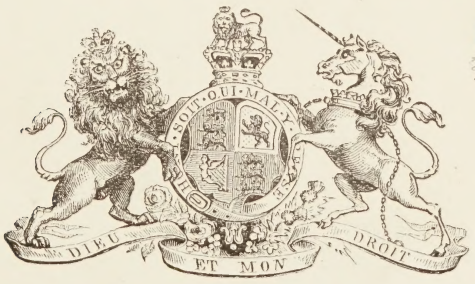
# NEWFOUNDLAND,

## (SECOND SERIES).

BEING A CONSOLIDATION OF THE STATUTE LAW OF THE COLONY, DOWN TO AND INCLUDING THE FIRST SESSION OF THE LEGISLATURE IN THE YEAR 1892.

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PRINTED AND PUBLISHED BY AND UNDER THE AUTHORITY OF THE GOVERNOR IN COUNCIL, AND PROCLAIMED UNDER THE AUTHORITY OF THE ACT 55 VIC., CAP. VIII., (1892).




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ST. JOHN'S, N. F.
J. W. WITHERS, PRINTER TO THE QUEEN'S MOST EXCELLENT MAJESTY.

1896.

## ADDENDA ET CORRIGENDA.

PAGE

90.—Section 31, third line, for "docket" read "cocket."

382.—Section 66, third line, after "issued" insert "in term," and after "such term" insert "and."

402.—Order II., rule 5, fourth line, for "No. 5," read "No. 4."

478.—Order XLVIII., rule 2, second line, for "32" read "31."

582.—Under subheading "Printing," sixth line, for ".01" read ".02."

584.—Eleventh line, after "Court" insert "or."

596.—Section 13, sixth line, after "him" strike out "as."

882.—Headings to chapter 117, sections 6 and 7, strike out "after 31st Dec., 1876."

971.—Section 23, second line, for "13" read "18."

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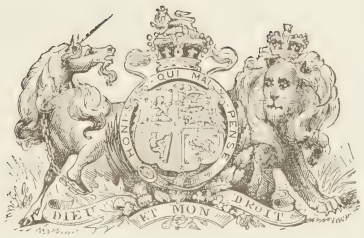
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ANNO QUINQUAGESIMO QUINTO

# VICTORIÆ REGINÆ.

## CAP. VIII.

### An Act for the Publication of the Consolidated Statutes, (Second Series).

[Passed 1st June, 1892.]

Whereas an Act was passed in the 52nd year of the reign of Her present Majesty, entitled "An Act for revising and consolidating the general Statutes of Newfoundland," and Preamble.

*Whereas* it is expedient to revise, classify and consolidate the general Acts, passed during the sessions of the Legislature in the 52nd, 53rd and 54th years of the reign of Her present Majesty, and also the Acts of the present session, and to incorporate the same with the said Act 52nd Vic., entitled "An Act for revising and consolidating the general Statutes of Newfoundland," and

*Whereas* it is expedient to make provision for giving the force of law to the body of Statutes to result from such incorporation and consolidation,—

Be it enacted by the Governor, Legislative Council and House of Assembly, in Legislative Session convened as follows:— Enacting clause.

1. The Governor in Council may select such Acts, and parts of Acts, passed during the sessions of the Legislature in the 52nd, 53rd and 54th years of the reign of Her present Majesty, and such Acts and parts of Acts passed during the

Acts of 52nd, 53rd and 54th years of the reign of Her Majesty, as well as the Acts of the present year to be incorporated and consolidated with the Acts 52 Vic., entitled "An Act for revising and consolidating the general statutes of Newfoundland."

present session as he may deem advisable, to consolidate and to incorporate with the said Act passed in the 52nd year of the reign of Her present Majesty, entitled "An Act for revising and consolidating the general Statutes of Newfoundland," and may cause them to be so consolidated and to be incorporated with the said Act, adapting their form and language to those of the said Act (but without changing their effect), striking out of the said Act any enactments expressly or in effect repealed by or inconsistent with the Acts so incorporated, and may add to the Schedule A to this Act, hereinafter mentioned, any Acts of the aforesaid sessions, the provisions of which are not included in such incorporation, but not repealed by this Act, and to Schedule B to this Act, hereinafter mentioned, such local and private Acts of the aforesaid sessions not included in or affected by such incorporation.

Said Act and Acts to be arranged.

**2.** The Governor in Council shall cause the said Act, and the said Acts so consolidated and incorporated therewith, to be arranged under appropriate parts and chapters with the following words prefixed, that is to say:—

"An Act for revising and consolidating the general Statutes of Newfoundland.

"Be it enacted by the Governor, the Legislative Council and House of Assembly, as follows:—"

Arrangement of chapters.

**3.** The chapters shall be arranged in such order as the Governor in Council shall see fit, and sections may be re-numbered; and wherever sections of such chapters or of any Act are referred to by number, and wherever Acts or chapters are rererred to by title, such changes may be made in the references to such numbers or titles as may be requisite to preserve the sense and meaning of the enactment; and wherever the same provision is repeated in two or more different chapters, the same may be omitted from one or more of such chapters: Provided that such provision shall be retained in at least one of such chapters.

Copy of said Act and Acts so consolidated to be deposited in Colonial Secretary's office.

**4** His Excellency the Governor shall cause a correct printed copy of the said Act and Acts so arranged as aforesaid, attested under his signature, and counter-signed by the Colonial Secretary and Attorney General, to be deposited in the office of the Colonial Secretary, which copy shall be held to be the original thereof, any marginal notes, notes at heads of chapters, and references to former enactments which may appear thereon, being held to form no part of the said statutes, but to be inserted for convenience of reference only.

Governor in Council to declare by proclamation when statutes shall come into force.

**5.** The Governor in Council shall, after such deposit of the said printed copy, declare by proclamation, the day on, from and after which the same shall come into force and have effect as law, by the designation of "The Consolidated Statutes of Newfoundland (second series)."

Chapter published in *Royal Gazette* may be brought into earlier operation.

**6.** Chapters of such Consolidated Statutes may be brought into earlier operation by being published in the *Royal Gazette* by order of the Governor in Council, and chapters so published shall take effect from such publication, or from the time otherwise expressed in any proclamation of the Governor, respecting the coming into operation of the same.

Chapters and Acts mentioned in Schedule A, as well as those to be added thereto, not to be affected by this Act.

**7.** The several chapters and Acts mentioned and enumerated in Schedule A to this Act, as well as the several Acts which shall be added to the said Schedule by virtue of section one of this Act, the provisions of which shall not be contained in the said Consolidated Statutes, (second series), shall not, however, be held to be repealed or otherwise affected by the provisions of this Act.

Local and private Acts in Schedule B not affected by this Act.

**8.** The several local and private Acts mentioned in Schedule B to this Act, as well as those which shall be added to the said Schedule by virtue of section one of this Act, shall not be held to be repealed, altered, or in any way affected by the provisions of this Act.

Certain portions of Consolidated Statutes, 1872, repealed only in so far as inconsistent with said Act or Acts.

**9.** And whereas doubts may arise as to the extent to which certain chapters of the said Consolidated Statutes of 1872, or portions thereof, or of certain Acts or portions thereof passed since the year 1872, are repealed by the provisions of the Act 52 Vic., entitled "An Act to amend and consolidate the law relating to the Supreme Court and procedure therein," and the Acts in amendment thereof, it is hereby declared that the several chapters and portions thereof, and Acts and portions thereof, mentioned in Schedule C to this Act, for the provisions of which it is intended that the said first-named Acts are substituted, shall not be included in or published as part of these Consolidated Statutes; but the same shall not be held to be expressly repealed by this Act, but shall be held to be repealed in so far only as the same are inconsistent with the provisions of the said first-named Acts or of any other Act passed during the present session, and any of the provisions of the said chapters or Acts not inconsistent with the provisions of the said first-named Acts or any other Act passed during the present session, may still be held to be in force.

Sections of Con. Stat. to continue in force.

**10.** Sections 104 to 111, inclusive, of chapter 20 of the Consolidated Statutes, 1872, shall continue in force.

Certain sections to continue in force and be a chapter of the Consolidated Statutes, (second series).

**11.** The following sections of chapter 23 of the Consolidated Statutes of 1872, "Of Evidence," shall continue in force and stand as a chapter of the "Consolidated Statutes (second series)," under the title "Of Evidence," viz.: sections seven to nineteen, inclusive; sections twenty-seven to thirty-five, inclusive; sections thirty-eight and thirty-nine; section forty-eight.

Respecting Acts passed during present session to which assent shall have been separately given.

**12.** Acts passed during the present session, to which the consent of the Governor has been or shall be given separately, shall come into operation from the time when by law or by the provisions of said Acts, the same are appointed to come into force; and all Acts in force on the first day of the present session, which have not since expired or have not been repealed by some such separate Act hereinbefore mentioned, or by some chapter published in advance, as mentioned in the sixth section of this Act, shall continue in force, subject to any amendments which may have been made by any separate Act or chapter published in advance, until the publication of the Consolidated Statutes by proclamation as aforesaid.

Publication and designation of statutes.

**13.** On, from and after the said day appointed by the Governor by his proclamation, the said Acts so arranged and consolidated shall come into force and effect as and by the designation of "The Consolidated Statutes of Newfoundland (second series)," to all intents as though the same were expressly embodied in and enacted by this Act, to come into force and have effect on, from and after such day; and on, from and after the same day, save and except the several chapters and Acts mentioned in the preceding sections, numbers 7, 8, 9, 10 and 11, and such Acts as may be added to Schedules A and B by virtue of the first section of this Act, the said Consolidated Statutes of 1872, and all Acts passed in the sessions of the Legislature held in the years between 1872, exclusive, and 1892, inclusive, shall stand repealed and cease to have any force or effect.

Repeal of certain Acts shall not revive any Acts repealed by them.

**14.** The repeal of the said Acts and parts of Acts shall not revive any Acts or provision of law repealed by them; nor shall the said repeal prevent the effect of any saving clause in the said Acts or parts of Acts, or the application of any of the said Acts or parts of Acts, or of any Act or provision of law formerly in force, to any transaction, matter or thing anterior to the said repeal, to which they would otherwise apply.

**15.** (1.) The repeal of the said Acts and parts of Acts shall not affect— Repealed Acts not affected in certain particulars.

(*a.*) Any penalty, bond, security, forfeiture or liability made or incurred before the time of such repeal, or any proceeding for enforcing the same, had, done, completed or pending at the time of such repeal;

(*b.*) Nor any action, suit, judgment, decree, certificate, execution, process, order, rule or any proceeding, matter or thing whatever respecting the same, had, done, made, entered, granted, completed, pending, existing or in force at the time of such repeal;

(*c.*) Nor any act, deed, right, title, interest, grant, assurance, dissent, will, registry, bye-law, rule, regulation, contract, lien, charge, matter or thing had, done, made, acquired, established or existing at the time of such repeal;

(*d.*) Nor any office, appointment, commission, salary, allowance, security, duty, or any other matter or thing appertaining thereto at the time of such appeal;

(*e.*) Nor any marriage certificate or registry thereof, lawfully had, made, granted or existing before or at the time of such repeal;

(*f.*) Nor shall such repeal defeat, disturb, invalidate or prejudicially affect any other matter or thing whatsoever had, done, completed, existing or pending at the time of such repeal.

(2.) But every such penalty, forfeiture and liability, and every such action, suit, judgment, decree, certificate, execution, prosecution, order, rule, proceeding, matter or thing, and every such act, deed, right, title, interest, grant, assurance, dissent, will, registry, bye-law, rule, regulation, contract, lien, charge, matter or thing, and every such office, appointment, commission, salary, allowance, security and duty, and every such marriage certificate and registry thereof, and every such other matter and thing, and the force and effect thereof, respectively, may and shall remain and continue as if no such repeal had taken place, and, so far as necessary, may and shall be continued, prosecuted, enforced and pro-

ceeded with under the said Consolidated Statutes, and others the statutes and laws having force in this colony, so far as applicable thereto, and subject to the provisions of the said several statutes and laws.

Governor in Council may direct Acts of British Parliament and other documents to be printed with Consolidated Statutes.

**16.** The Governor in Council may direct that Acts or parts of Acts of the parliament of Great Britain and Ireland, proclamations, treaties, or other public documents which he may select from those in force in this colony, be printed, annexed to and distributed with the printed copies of the "Consolidated Statutes (second series.)"

Evidence of the Consolidated Statutes (second series).

**17.** Copies of the said "Consolidated Statutes (second series)," purporting to be printed and published by and under the authority of the Governor in Council from the correct printed copy so deposited as aforesaid in the office of the Colonial Secretary, shall be received as evidence of the Consolidated Statutes, (second series), in all courts and places whatsoever.

The Acts in Schedule D are hereby repealed.

**18.** The Acts mentioned in Schedule D to this Act are hereby repealed to the extent mentioned in the third column of the said Schedule: Provided that such repeal shall not affect the validity of anything done by virtue of the said Acts so repealed, and that chapters of the Consolidated Statutes published in advance under the provisions of the said Acts shall continue in force, notwithstanding such repeal.

---

## SCHEDULE A.

Acts not included or repealed.

ACTS OF THE LEGISLATURE, THE PROVISIONS OF WHICH ARE NOT INCLUDED OR CONTAINED IN THE "CONSOLIDATED STATUTES (SECOND SERIES)," BUT NOT HEREBY REPEALED:

Public Debt.

Consolidated Statutes, 1872, chapter 56, "Of the Consolidation of part of the public debt of this colony."

38 VICTORIA, 1875.

38 Vic., cap. 12—Inflammable Oils.

Cap. 12.—An Act to raise by loan a sum of money for the erection of a building for the storage of inflammable oils.

39 VICTORIA, 1876.

39 Vic., cap. 14—Loan.

Cap. 14.—An Act to authorize the raising by loan of a sum of money for the public service of this colony.

40 VICTORIA, 1877.

Cap. 24.—An Act to authorize the consolidation of part of the public debt of the colony. 40 Vic., cap. 24—Public Debt.

42 VICTORIA, 1879.

Cap. 9.—An Act to make provision for certain improvements in the Harbors of Grand Bank and Fortune, and for other purposes. 42 Vic., cap. 9—Harbors of Grand Bank and Fortune.

45 VICTORIA, 1882.

Cap. 20.—An Act to provide for certain Ocean and Harbor Lights in this colony. 45 Vic., cap. 20—Ocean and Harbor Lights.

46 VICTORIA, 1883.

Cap. 22.—An Act to authorize the consolidation of part of the public debt of this colony. 46 Vic., cap. 22—Public Debt.

50 VICTORIA, 1887.

Cap. 6.—An Act to authorize the raising of a sum of money for the public service of this colony. 50 Vic., cap. 6—Loan.

51 VICTORIA, 1888.

Cap. 3.—An Act to authorize the raising of a sum of money for the public service of the colony. 51 Vic., cap. 3—Loan.

---

## SCHEDULE B.

LOCAL AND PRIVATE ACTS, NOT INCLUDED IN OR REPEALED OR AFFECTED BY "THE CONSOLIDATED STATUTES (SECOND SERIES)": Local and private Acts not included or repealed:

38 VICTORIA, 1875.

Cap. 21.—An Act relating to the Wesleyan Methodists of this colony, for incorporating Conferences of their body in this colony, and to make provision with regard to certain trusts connected therewith. 38 Vic., cap. 31—Wesleyan Conference.

40 VICTORIA, 1877.

Cap. 17.—An Act for the more effectual transfer of certain Church of England properties to the Diocesan Synod of Newfoundland. 40 Vic., cap. 17—Diocesan Synod property.

Cap. 18.—An Act for the incorporation of the Presbyterian body in Newfoundland, and for other purposes. 40 Vic., cap. 18—Presbyterian incorporation.

40 Vic., cap. 20—Union Bank.

Cap 20.—An Act to continue the Act for the incorporation of the Union Bank of Newfoundland. and the several Acts in amendment thereof.

40 Vic., cap. 21—Commercial Bank.

Cap. 21.—An Act to continue and amend the Act for the incorporation of the Commercial Bank, and the several Acts in amendment thereof.

42 Victoria, 1879.

42 Vic., cap. 7—General Water Co.

Cap 7.—An Act to amend an Act passed in the thirty-ninth year of the reign of Her present Majesty, entitled "An Act for the amendment of the Acts in relation to the General Water Company," and an Act passed in the forty-first year of the said reign, entitled "An Act to amend an Act passed in the thirty-ninth year of the reign of Her present Majesty, entitled 'An Act for the amendment of the Acts in relation to the General Water Company.'"

43 Victoria, 1880.

43 Vic., cap. 16—General Water Co.

Cap. 16.—An Act respecting certain assessments made under the Acts relating to the General Water Company.

44 Victoria, 1881.

44 Vic., cap, 2—Newfoundland Railway.

Cap. 2.—An Act respecting the Newfoundland Railway.

44 Vic., cap. 9—General Water Co.

Cap. 9.—An Act to amend the Acts relating to the General Water Company.

44 Vic., cap. 10—Harbor Grace Water Co.

Cap. 10.—An Act to enable the Harbor Grace Water Company to extend the capital stock of said company, and for other pnrposes.

45 Victoria, 1882.

45 Vic., cap. 22—Union Bank.

Cap. 22.—An Act to amend the Acts relating to the Union Bank of Newfoundland.

46 Victoria, 1883.

46 Vic., cap. 5—Dry or Graving Dock.

Cap. 5.—An Act to provide for the construction of a Dry or Graving Dock, and for other purposes connected therewith.

46 Vic., cap. 21—Anglo-American Telegraph Co.

Cap. 21.—An Act for granting to the Anglo-American Telegraph Company (limited), certain powers and privileges for the purpose of enabling them to supply their establishments at Heart's Content with water, and for other purposes.

47 Victoria, 1884.

47 Vic., cap. 6—Carbonear Water Co.

Cap. 6.—An Act to incorporate the Carbonear Water Company.

Cap 15.—An Act to repeal an Act passed in the thirty-eighth year of the reign of Her present Majesty, chapter twenty-one, entitled "The Methodist Incorporation and Trusts' Acts, 1875," and for other purposes. 47 Vic., cap. 15—Methodist Incorporation and Trusts.

49 Victoria, 1886.

Cap. 4.—An Act in aid of the Imperial Act providing for the transfer to the Dominion of Canada of the Lighthouse at Cape Race, and its appurtenances, and for other purposes connected therewith. 49 Vic., cap. 4—Transfer of Cape Race lighthouse.

50 Victoria, 1887.

Cap. 16.—An Act to amend and consolidate the Acts relating to the General Water Company. 50 Vic., cap. 16—General Water Co.

Cap. 17.—An Act to enable the Harbor Grace Water Company to extend the capital stock of said company, and for other purposes. 50 Vic., cap. 17—Harbor Grace Water Co.

51 Victoria, 1888.

Cap. 6.—An Act to amend an Act passed in the fiftieth year of the reign of Her present Majesty, entitled "An Act to amend and consolidate the Acts relating to the General Water Company." 51 Vic., cap. 6—General Water Co.

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## SCHEDULE C.

CHAPTERS OF CONSOLIDATED STATUTES, 1872, AND ACTS PASSED SINCE 1872, THE PROVISIONS OF WHICH ARE OMITTED FROM "THE CONSOLIDATED STATUTES (SECOND SERIES)," AND FOR WHICH THE PROVISIONS OF "THE JUDICATURE ACT, 1889," AND THE ACTS IN AMENDMENT THEREOF, ARE SUBSTITUTED, BUT WHICH ARE TO BE HELD NOT TO BE EXPRESSLY REPEALED BY THIS ACT:— Chapters and Acts not included but not expressly repealed:

CONSOLIDATED STATUTES, 1872.

Cap. 9.—Of the Supreme Court and the Judges, Officers, Sessions and Circuits thereof. Con. Stat., 1872, cap. 9—Supreme Court, Judges, &c.

Cap. 20.—Of Practice and mode of Procedure in the Supreme Court in St. John's (except sections 104 to 111, inclusive). Con. Stat., 1872, cap. 30—Practice and Procedure.

Con. Stat., 1872, cap. 21—Practice Common Law side.

Cap. 21.—Of Practice on Common Law side of the Supreme Court on Circuit.

Con. Stat., 1872, cap. 22—Forms.

Cap. 22.—Forms of Pleadings in Supreme Court in St. John's.

Con. Stat., 1872, cap. 23—Evidence.

Cap. 23.—Of Evidence (except sections 7 to 19, inclusive; sections twenty-seven to thirty-five, inclusive; sections thirty-eight, thirty-nine and forty-eight).

Con. Stat., 1872, cap. 24—Costs.

Cap 24.—Of Costs on the Common Law side of the Supreme Court.

C. S., 1872, cap. 25—Interpleader.

Cap. 25.—Of Proceedings in the nature of Interpleader.

Con. Stat., 1872, cap. 28—Equity.

Cap. 28.—Of Proceedings in Equity.

## Acts since 1872.

### 36 Victoria, 1872.

36 Vic., cap. 6—Circuit Equity.

Cap. 6.—An Act to regulate the Practice on the Equity side of the Supreme Court on Circuit.

### 41 Victoria, 1878.

41 Vic., cap. 9—Equity side Supreme Court.

Cap. 9.—An Act to amend the course of Procedure on the Equity side of the Supreme Court.

### 42 Victoria, 1879.

42 Vic., cap. 16—Probates and Administrations.

Cap. 16.—An Act to amend chapter 31 of the Consolidated Statutes, entitled "Of Probates of Wills and Letters of Administration."

### 43 Victoria, 1880.

43 Vic., cap. 11—Commissioners Supreme Court abroad.

Cap. 11.—An Act to provide for the appointment of Commissioners of the Supreme Court in places abroad.

43 Vic., cap. 12—Administration of justice.

Cap. 12.—An Act to amend the Law relating to the Administration of Justice.

### 45 Victoria, 1882.

45 Vic., cap. 12—Probate and Administration.

Cap. 12.—An Act to amend the Law relating to Probate and Administration.

45 Vic., cap. 13—Imprisonment for debt.

Cap. 13.—An Act to amend the Law relating to Imprisonment for Debt.

45 Vic., cap. 16—Administration of justice.

Cap. 16.—An Act to amend the Law relating to the Administration of Justice.

47 VICTORIA, 1884.

Cap. 11.—An Act to amend chapter 9 of the Consolidated Statutes of Newfoundland, entitled "Of the Supreme Court, and the Judges, Officers, Sessions and Circuits thereof," and chapter 11 of the said Consolidated Statutes, entitled "Of the Circuits." 47 Vic., cap. 11—Supreme Court, Judges, Circuit, &c.

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## SCHEDULE D.

| CHAPTER AND SESSION. | TITLE OR SHORT TITLE. | EXTENT OF REPEAL. |
|---|---|---|
| 52 Vic., cap. 24 | An Act for the Publication of the Consolidated Statutes. | The whole Act. |
| 53 Vic., cap. 26 | An Act to amend 52 Vic., cap. 24, entitled "An Act for the Publication of the Consolidated Statutes." | The whole Act. |
| 54 Vic., cap. 22 | An Act to amend 53 Vic., cap. 26, entitled "An Act to amend 52 Vic., cap. 24, entitled 'An Act for the Publication of the Consolidated Statutes.'" | The whole Act. |

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# PROCLAMATION.

*By His Excellency Sir* HERBERT HARLEY MURRAY, *Knight Commander of the Most Honourable Order of the Bath, Governor and Commander-in-Chief in and over the Island of Newfoundland and its Dependencies.*

H. MURRAY,
Governor.
[L. S.]

WHEREAS, I, the Governor in Council, have, in accordance with the provisions of an Act of the Legislature of this Colony, passed in the fifty-fifth year of the reign of Her present Majesty, Chapter Eight, entitled "An Act for the Publication of the Consolidated Statutes, (Second Series)," caused a correct printed copy of the Acts of the Legislature of this Colony, consolidated under the authority of the said Act, and attested with my signature, and countersigned by the Attorney General and Colonial Secretary, to be deposited in the office of the Colonial Secretary, which copy it is provided by the said Act, shall be held to be the original of the said Consolidated Acts: And whereas, by the said Act, I, the said Governor in Council, am authorized, after the deposit of the said printed copy as aforesaid, to declare the day on, from, and after which the same shall come into force and have effect as law:

I do, therefore, with the advice of my Executive Council, by this my Proclamation, declare that on, from and after the Twelfth day of August now next ensuing, the said Acts shall come into force and effect as law, by the designation of "The Consolidated Statutes of Newfoundland, (Second Series)," of which all Courts, Justices, and persons whomsoever shall take due notice and govern themselves accordingly.

Given under my Hand and Seal, at St. John's, in the aforesaid Island, this 21st day of July, A. D. 1896.

By His Excellency's Command,

R. BOND,
*Colonial Secretary.*

THE

# CONSOLIDATED STATUTES

OF

# NEWFOUNDLAND.

[SECOND SERIES.]

In the Year of Our Lord One Thousand Eight Hundred and Ninety-two.

## AN ACT

FOR REVISING AND CONSOLIDATING THE GENERAL STATUTE LAWS OF THE COLONY.

[Passed 1st June, 1892.]

Be it enacted by the Governor, Legislative Council and House of Assembly, in Legislative session convened, as follows:—

# PRELIMINARY TITLE.

## CHAPTER 1.

### Of the Promulgation and Construction of Statutes.


SECTION
1.—All Acts public.
2.—Date of commencement.
3.—Publication—how evidence.
4.—Repeal or alteration the same session.
5.—Sections.
6.—Construction of Acts; meaning of terms; general provisions.
7.—Repeal—various provisions.


**1.** All Acts shall be deemed public, and may be declared on and given in evidence without being specially pleaded.

**2.** The Clerk of the Legislative Council shall endorse on the back of every Act the day of the month and year of the Governor's assent thereto, and the endorsement shall be held part of the Act and shall be the date of its commencement, unless otherwise provided.

**3.** Printed copies of Acts published in the *Royal Gazette* newspaper in St. John's, or purporting to be published by the Queen's printer for the island, shall be evidence of such Acts.

**4.** Any Act may be altered or repealed during the session in which it shall have passed.

**5.** All Acts shall be divided into sections, if there be more enactments than one, and each section shall be deemed to be a substantive enactment without any introductory words.

**6.** In the construction of Acts the following rules shall be observed, unless otherwise expressly provided for, or such construction would be inconsistent with the manifest intention of the Legislature or repugnant to the context, that is to say:—

The words "Queen" or "Her Majesty," shall include her Majesty, her heirs or successors.

"Governor," shall include the person administering the Government of the colony for the time being.

"Newfoundland," or "the Island," or "this Island," shall be held to mean and include the island of Newfoundland and the islands adjacent thereto.

"Colony," or "the Colony," or "this Colony," shall be held to mean and include the island of Newfoundland and the islands adjacent thereto, and Labrador and the islands adjacent thereto.

"Warrant," shall signify warrant under hand and seal.

"Month," shall signify a calendar month, and "Year," a calendar year; "Year" alone, shall be equivalent to the expression "Year of our Lord."

"Oath" or "Affidavit," shall include affirmation in cases where by law an affirmation may be substituted for an oath or affidavit; and in like cases the word "Sworn" shall include the word "Affirmed."

"Person" may extend to bodies politic and corporate as well as to individuals, and also to a class of persons.

"Justice" shall signify Justice of the Peace.

"Gaol" or "Common Gaol," shall include penitentiary.

"Grantor" may be construed as including every person from whom any freehold estate or interest passes by instrument in writing, and "Grantee" as including every person to whom any such estate or interest passes in like manner.

"Highway" or "Road," shall signify a public highway or road, and may also include public bridges.

"Goods" shall mean personal property.

"Representatives" shall mean executors and administrators.

"Wills" shall include codicils.

"Ship" or "Vessel," shall mean any description of vessel or boat impelled by sails, steam or otherwise.

"Sureties" shall mean sufficient sureties, and "Security" sufficient security.

The word "may" shall be construed as directory, and the word "shall" as imperative, unless from the context a contrary intention shall appear.

Every word importing the singular number only may extend to several persons or things as well as to one person or thing; and every word importing the plural number only may extend to one person or thing as well as several persons or things; and every word importing the masculine gender only may extend to females as well as males.

All words purporting to give a joint authority to three or more persons shall be construed as giving authority to a majority of such persons.

Where authority to make appointments to public situations is conferred, it shall include the power to fill up vacancies caused by death, resignation, or removal or refusal to act.

Where a penalty shall be imposed and no particular mode be prescribed for the recovery thereof, the same may be recovered in the name of any person who will sue therefor in the same manner and with the like costs as if it were a private debt due such person, the nature of the offence being briefly stated; and where no particular mode of applying any penalty shall be prescribed, the same shall be paid one half to the person who shall have sued for the same and the other half to the Receiver General for the use of the colony.

The imposition of a penalty shall not relieve any person from liability to answer for special damages to a party injured.

When power to make bye-laws, rules or orders is conferred, it shall include the power to alter or revoke the same and make others. And no such bye-laws, rules or orders shall be enforced if contrary to law.

Where forms are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead, shall not viatiate them.

Justices of the Peace may administer all oaths with regard to the taking of which no particular directions are given.

If the day upon which an act is to be done should fall on a Sunday, Christmas Day or Good Friday, the same shall be performed on the day following.

Where, in these consolidated statutes, the future tense or words implying futurity may be used, and there are already existing appointments or facts corresponding with what may be provided for by such future tense or words implying futurity, such appointments and facts shall be held to be intended by and to satisfy the requirements of the provisions of these consolidated statutes until new appointments or other proceedings shall become necessary.

When bonds are required to be given by a public officer, they shall be taken in her Majesty's name where not otherwise directed.

When the number to constitute a quorum in any Board under any Act shall not be prescribed, a majority of the Board shall be a quorum, and a chairman shall only have an equal vote with other members.

Words directing or empowering a public office or functionary to do any act or thing, or otherwise applying to him by his name of office, shall include his successors in such office and his and their deputies.

Wherever a penalty not exceeding two hundred dollars, or sentence of imprisonment not exceeding six months, may be imposed for any offence, unless otherwise provided, it shall be held that such offence may be tried in a summary manner before and the penalty or imprisonment imposed therefor by a Justice of the Peace.

Words authorizing the appointment of any public officer or functionary, or any deputy, shall include the power of removing him, re-appointing him, or appointing another in his stead, in the discretion of the authority in whom the power of appointment is vested.

If any sum of the public money is by an Act appropriated for any purpose, or directed to be paid by the Governor, then, if no other provision is made respecting it, such sum shall be payable under warrant of the Governor, directed to the Receiver General, out of the general revenue of the colony; and all persons entrusted with the expenditure of any such sum, or any part thereof, shall account for the same in such manner and form, with such vouchers, at such periods, and to such officers, as the Governor may direct.

**7**. No Act or any portion of an Act that shall be repealed shall be revived unless by express enactment.

(*a.*) Where an Act shall be repealed in whole or in part, and other provisions substituted, all persons acting under the old law shall continue to act as if appointed under the new law, until others are appointed in their stead; and all proceedings taken under the old law shall be taken up and continued under the new, when not inconsistent therewith, and all prosecutions may be taken and continued, and all penalties may be recovered and proceedings had in relation to matters which have happened before the repeal, in the same manner as if the law were still in force.

(*b.*) The repeal of an Act at any time shall not affect any act done or any right or right of action existing, accruing, accrued or established, or any proceedings commenced in a civil cause before the time when such repeal shall take effect; but the proceedings in such case shall be conformable when necessary to the repealing Act.

(*c.*) No offence committed and no penalty or forfeiture incurred, and no proceeding pending under any Act at any time repealed, shall be affected by the repeal, except that the proceedings shall be conformable where necessary to the repealing Act, and that where any penalty, forfeiture or punishment has been mitigated by any of the provisions of the repealing Act, such provisions shall be extended and applied to any judgment to be pronounced after such repeal.

(*d.*) All rules and regulations made under an Act before the repeal thereof shall continue valid until altered or annulled,

(*e*) All appointments and all bonds and securities given by the parties appointed under any Act at any time passed and repealed shall not be affected thereby, but shall remain in full force; and all offices, establishments, books, papers and all other things made or used under a repealed Act, shall continue as before the repeal.

# TITLE I.

## OF THE LEGISLATURE.

## CHAPTER 2.

### Of the Representation in the House of Assembly and the Powers and Privileges thereof.

SECTION
1.—Duration of House of Assembly.
2.—Number of members.
3.—Boundaries of districts.
4.—Power to establish rules.
5.—Privileges of House.
6.—Right of House or Committees to examine witnesses on oath.
7.—Affidavit or declaration may be made before clerk.
8.—False testimony—perjury.
SECTION
9.—Power of House to compel attendance of witnesses.
10.—Infringements of Act.
11.—Persons not liable for damages for act done by authority of House.
12.—Freedom of members from arrest, etc., in certain cases.
13.—*Bona fide* publication.
14.—Interpretation.
15.—Penal section.
16.—Proceedings—how taken.

**1.** The House of Assembly shall continue, notwithstanding the demise of her Majesty, for four years from the day on which they shall by proclamation be appointed to meet, unless sooner dissolved, and no longer.

**2.** The House of Assembly shall consist of thirty-six members, of whom ten shall form a quorum.

**3.** The representation in the House of Assembly shall be as follows, that is to say:—

(1.) The district of St. Barbe shall comprise all that part of this island extending from Gregory River on the north side, north-easterly to Cape Bauld, and thence in a south-easterly direction to Cape St. John, with the islands adjacent thereto, and shall be represented in the House of Assembly by one member.

(2.) The district of Twillingate shall consist of and include that part of this island situate and lying between Cape John and Fare-

well Point, and to the westward of a line drawn true north and south from Farewell Point, with the islands adjacent thereto, and shall be represented in the House of Assembly by three members.

(3.) The district of Fogo shall consist of and include all that part of the island situate and lying between Farewell Point and Cape Freels and the islands lying to the eastward of a line drawn true north and south from Farewell Point, and shall be represented in the House of Assembly by one member.

(4.) The district of Bonavista shall consist of and include all that part of the island which is situate and lying between Cape Freels and Cape Bonavista, with the islands adjacent thereto, and shall be represented in the House of Assembly by three members.

(5.) The district of Trinity shall consist of and include all that part of the island situate and lying between Cape Bonavista and Selby's Cove, Dog Bay, inclusive, with the islands adjacent thereto, and shall extend to and include township eighteen and township nineteen south of the principal base line laid down in latitude forty-nine north, and range twenty east of the principal meridian on the fifty-sixth meridian of longitude referred to in section seven of Chapter Thirteen of these Consolidated Statutes, and shall be represented in the House of Assembly by three members.

(6.) The district of Bay-de-Verde shall consist of and include all that part of the island situate and lying between Selby's Cove in Trinity Bay and Split Point, and thence to and including Freshwater in Conception Bay, with the islands adjacent thereto, and shall be represented in the House of Assembly by two members.

(7.) The district of Carbonear shall consist of and include all that part of the island situate and lying between Harbor Grace, exclusive, and Freshwater, exclusive, and shall be represented in the House of Assembly by one member.

(8.) The district of Harbor Grace shall consist of and include all that part of the island situate and lying between Port-de-Grave, exclusive, and Harbor Grace, inclusive, including Harbor Grace island, and shall be represented in the House of Assembly by three members.

(9.) The district of Port-de-Grave shall consist of and include all that part of the island situate and lying between Turk's Gut, exclusive, and Port-de-Grave, inclusive, and shall be represented in the House of Assembly by one member.

(10.) The district of Harbor Main shall consist of and include all that part of the island situate and lying between the district of St John's and Turk's Gut, inclusive, and shall be represented in the House of Assembly by two members.

(11.) The district of St. John's shall consist of and include all that part of the island bounded by the shore from Petty Harbor Motion to Cape St. Francis, and thence by the shore to and including Broad Cove on the south shore of Conception Bay, and north and east of a line drawn from Broad Cove aforesaid to the northern Gould's bridge on the Bay Bull's road, and thence to Petty Harbor Motion aforesaid and shall also include Belle Isle in Conception Bay, and shall be represented in the House of Assembly by six members: of whom three shall be chosen by the electors of the said district residing southward of St. John's harbor and westward of a line drawn from said harbor through the centre of Beck's Cove, thence across Duckworth street round the west side of Play-house hill along the centre of Carter's lane, up Carter's hill, and thence along Freshwater road to the west end thereof and thence in a direct line to Broad Cove settlement, inclusive, which shall be called the division of Saint John's West; and three by the electors of the said district residing eastward of the above-named cove, line, lane and roads, including Belle Isle, which shall be called the division of St. John's East.

(12.) The district of Ferryland shall consist of and include all that part of the island which bounded by the shore is situate and lying between the northern Gould's bridge on the Bay Bull's road and Cape Race, inclusive, and shall be represented in the House of Assembly by two members.

(13.) The district of Placentia and St. Mary's shall consist of and include all that part of the island which, bounded in like manner, is situate and lying between Cape Race and Rushoon West, and shall be represented in the House of Assembly by three members.

(14.) The district of Burin shall consist of and include all that part of the island which bounded in like manner, is situate and lying between Rushoon West, in Placentia Bay, and Frenchman's Cove, in Fortune Bay, both places inclusive, and shall be represented in the House of Assembly by two members.

(15.) The district of Fortune Bay shall consist of and include all that part of the island which, bounded in like manner, is situate and lying between Garnish, in Fortune Bay, to Bonne Bay, in Hermitage Bay, both inclusive, and shall be represented in the House of Assembly by one member.

(16.) The district of Burgeo and La Poile shall consist of and include all that part of the island which, bounded in like manner, is situate and lying between the Western Point of Bonne Bay, in Hermitage Bay, and Cape Ray, both inclusive, with the islands adjacent thereto, and shall be represented in the House of Assembly by one member.

(17.) The district of St George shall consist of and include all that part of the island on the West lying between Cape Ray and Cape Gregory, with the islands adjacent thereto, and shall be represented in the House of Assembly by one member.

**4.** The House may establish rules for its government and attendance of its members, and the conduct of its business, and may alter, amend and repeal the same: Provided that no such rules shall be altered, amended or repealed except by a vote of two-thirds of the members of such House: Provided also, that no rule or order of such House shall affect in any way, by fine or imprisonment, any member of such House; and provided that no such rule or order, or anything in this chapter shall, or shall be construed to, limit or restrict the liberty and privilege of speech or debate of such House, or any rights or privileges of such House now existing.

**5.** Upon any enquiry touching the privileges, immunities or powers of the House of Assembly, or any of the committees or members thereof, respectively, any copy of the Journals of such House, printed or purporting to be printed by the order of the same, shall be admitted as *prima facie* evidence of such Journals by all Courts, Justices and others, without any proof being given that such copy was so printed.

**6.** The House or any committee may require that facts, matters and things relating to the subject of enquiry before the House or such committee be verified or otherwise ascertained by the oral examination of witnesses, and may examine such witnesses upon oath; and for that purpose the Speaker or Clerk of the House, or the Chairman or Clerk of such committee, may administer an oath in the form following, or to the like effect, to any such witness:—

"The evidence you shall give to the House (or committee) touching (stating here the matter *then under consideration*) shall be the truth, the whole truth, and nothing but the truth. So help you God."

**7.** Where witnesses are not required to be orally examined before the House, or a committee thereof, any oath, affirmation, declaration, or affidavit in writing, which is required to be made or taken by or according to any rule or order of such House or committee, and in respect of any matter or thing pending or proceeding before such House or committee, may be made and taken before the Clerk of the House, any

Commissioner for taking affidavits in the Supreme Court, or any Notary Public.

**8.** Any person examined before the House or any committee thereof, who shall wilfully give any false testimony on any question material to the subject matter which the House or such committee is then engaged in investigating or enquiring into, shall be guilty of the crime of perjury, and, on indictment therefor and conviction thereof before the Supreme Court, be subject to the penalties now attaching to the crime of perjury.

**9.** The House may at all times command and compel the attendance before the House, or before any committee thereof, or before any joint committee of the Legislative Council and the House, of such person, and the production of such papers and things as such House or committee may deem necessary for any of its proceedings or deliberations. Any person neglecting or refusing to attend, or to produce such papers and things before such House or committee, shall be guilty of a violation of this chapter: Provided, that no person shall be liable to produce any paper or document which he would not be compelled to produce in a Court of Justice, or from the production of which he may be privileged by law.

**10.** The following acts, matters and things are prohibited, and shall be deemed infringements of this chapter:—

(1.) Assaults upon members of the House during any Session of the Legislature.

(2.) Obstructing, threatening, or attempting to force or intimidate members of the House.

(3.) The refusal or failure of any officer of the House, or other person, to obey any rule, order or resolution of the House.

(4.) The offering to, or acceptance by, any member of a bribe to influence him in his proceedings as such member.

(5.) Assaults upon, or interference with, the officers of the House, while in the execution of their duty.

(6.) Tampering with any witness in respect to his evidence, to be given to the House or any committee thereof, or directly or indirectly endeavouring to deter or hinder any person appearing or giving evidence.

(7.) Presenting to the House or to any committee thereof, any forged or falsified document with intent to deceive such House or committee.

8.) Forging, falsifying or unlawfully altering any of the records of the House or of any committee, or any document or petition presented or filed or intended to be presented or filed before

such House or committee, or the setting or subscribing by any person of the name of any other person to any such document or petition with intent to deceive.

**11.** No person shall be liable, in damages or otherwise, for any act done under authority of the House, and within its legal power, or under or by virtue of any warrant issued under such authority. All such warrants may command the aid and assistance of sheriffs, bailiffs, constables and others; and every refusal or failure to give such aid or assistance, when required, shall be an infringement of this chapter.

**12.** No member of the House shall be liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion, or otherwise, or said by him before such House.

**13.** It shall be lawful in every civil proceeding against any person for printing any extract from, or abstract of any report, paper, votes or proceedings of the House, to give evidence, (under the general issue or denial) of such report, paper, votes or proceedings, to show that such extract or abstract was published *bona fide* and without malice; and, if such shall be the opinion of the Court, or of the jury, as the case may be, judgment shall be rendered or a verdict shall be entered for the defendant.

**14.** In this chapter the word "House" shall mean the House of Assembly of Newfoundland, and the word "Committee" shall mean any standing or select committee of the House, or any joint committee of the Legislative Council and the House

**15.** Any persons violating sections nine and ten of this chapter shall, upon conviction, be subject to a penalty not exceeding one hundred dollars; and, in default of payment, to be imprisoned for such time (not exceeding three months), during the session of the Legislature then being held, as may be determined by the House.

**16.** Proceedings for enquiry into any violation of the said section shall be had and taken by the House or a committee thereof, and the warrant or summons of the Speaker or chairman of such committee shall have the effect and force of a summons or warrant of a stipendiary magistrate.

# CHAPTER 3.

## Of the Election of Members of the House of Assembly.


SECTION

1.—Short Title.
2.—Division of Chapters.
3.—Interpretation clause.

QUALIFICATION AND REGISTRATION.

4.—Qualification of electors.
5, 6, 7.—Persons disqualified.
8.—Registration necessary.
9.—Taking of lists of electors.
10.—Governor in Council may make rules.
11.—Copies of lists to be posted up.
12.—Return to be made to Justices.
13.—Powers of Justices before Court of Revision.
14.—Justices to prepare alphabetical lists.
15.—Justices to note objections to qualifications on lists.
16.—Lists to be signed and publicly posted.
17.—True copy to be kept by Justices.
18.—Procedure when qualification of elector objected to.
19.—Courts of Revision.
20.—Name to stand till qualification lost.
21.—Absence during time when list posted.
22.—Names of paupers to be stricken off.
23.—Power to adjourn Court; perjury.
24.—Lists to be signed and kept of record.
25.—Copies of lists.
26.—Register to be transmitted to Colonial Secretary.
27.—Appeal.
28.—By-election.
29.—Powers of Stipendiary Magistrate.

ELECTIONS.

30.—Election writ.
31.—Persons disqualified from being Returning Officers, &c.
32.—Form of writ.
33.—Governor shall fix days and places of nomination by proclamation.
34.—Polling districts to be proclaimed.
35.—Colonial Secretary to provide materials.
36.—Ballot boxes; construction, &c.
37.—Date of receiving writ to be endorsed.
38.—Election Clerk—appointment.
39.—Servant, &c., of Candidate disqualified as Returning Officer, &c.
40.—Duty of Election Clerk.
41.—Copies of proclamation to be posted up
42.—Public notices to be by placards, &c.
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## PART I.

### PRELIMINARY.

**1.** This Chapter may be cited as "The Election Act, 1889."

**2.** This Chapter is divided into parts, as follows:—

Part I.—Preliminary.

Part II.—Qualification and Registration of Electors.

Part III.—Election of members of the House of Assembly

Part IV.—Corrupt and Illegal Practices.

Part V.—Trial of Controverted Elections.

**3.** In this Chapter, unless the context otherwise requires—

(*a*) The expression "person" means a male person.

(*b*.) The expression "Electoral District" means any place entitled to return a member or members to the General Assembly of Newfoundland.

(*c*) The expression "Polling Station" means the place where polling is authorized by law to take place.

(*d*.) The expression "List of Electors" means the list of persons qualified by law to vote at the election of a member of the General Assembly of Newfoundland.

(*e*.) The expression "Voters' List" means the list kept by a Polling Clerk at an election.

## PART II.

### QUALIFICATION AND REGISTRATION OF ELECTORS.

#### *Qualification.*

**4.** Every male British subject of the full age of twenty-one years, who for two years preceding the day of election, has been resident in this Colony, and is of sound understanding, shall be competent to vote for the election of members of the House of Assembly in and for the Electoral District within which he has resided for at least one year immediately preceding the election: Provided that absence from the District or division of a District, within the year aforesaid, shall not be held to disqualify an elector."

**5** No person who shall have received relief, as a pauper, from or out of the public moneys, at any time during the year immediately preceding any election of a member to serve in the House of Assembly, shall be competent to vote at such election.

**6.** The Judges of any Court now existing or hereafter created, whose appointment rests with the Governor, shall be disqualified and incompetent to vote at any election.

**7.** Returning Officers and Election Clerks shall be disqualified and incompetent to vote at any election for the Electoral District for which they hold office or position respectively, except that the Returning Officer, at any election, may, as hereinafter provided, vote in the case of an equality of votes between candidates.

**8.** Except as hereinafter provided as to Supplementary Lists, no person shall be entitled to vote at the election of any member to serve in the House of Assembly whose name shall not have been previously registered in the manner required by this chapter.

*Registration.*

**9.** At the Courts of General or Quarter Sessions of the Peace, to be held in the several districts of this Island at such times and places as the Governor shall, by his Proclamation appoint, the Justices at such Sessions shall, once in every four years, make out lists of all the inhabited places within their respective districts, and shall assign to each of such Justices within such district a particular division thereof, within which such Justices shall act in procuring and revising the lists required by this chapter; and such Justices shall give orders or instructions in writing to such persons as they may appoint to make out alphabetical lists, according to the form of schedule A to this chapter, of all persons entitled to vote at any election of a member of the House of Assembly, who reside at such places or within such limits as such Justices may, by such orders or instructions, assign to such persons respectively, and of all persons who shall claim to be inserted in such lists Every person so appointed, before entering upon such duties, shall be sworn faithfully to perform the same before any Justice of the Peace.

**10.** The Governor in Council may make all such rules and regulations as may be deemed necessary for the more efficient preparation and revision of the lists of electors provided for by this chapter, and impose fines and penalties for the violation or non-observance thereof, and said rules and regulations, upon publication thereof in the *Royal Gazette*, shall have the force and effect of law.

**11.** The persons appointed to prepare the lists shall cause copies thereof to be fixed on the Court House or near the doors of all churches.

or other places of public worship within their respective limits; or if there be no such Court House, Church, or place of public worship, then on some public place within such limits, and shall also affix thereto a notice according to the form of schedule B to this chapter, requiring all persons whose names are not included in such lists, and who may consider themselves entitled to vote at such election, to deliver or transmit to the said persons by whom such lists have been respectively prepared, on or before the time mentioned in such notice, a notice of their claim as such electors, according to the form of schedule C, or to that effect.

**12**. The persons appointed as aforesaid shall, to the best of their knowledge and information, insert the names of all qualified persons into such lists, and deliver and duly make return of all such lists to the Justices by whose directions such persons have acted in making out such lists.

**13**. The said Justices shall have power at any time before the holding of the Courts of Revision, provided for by the said chapter, to summon before them at any reasonable times all persons whomsoever who may be able or supposed to be able to give evidence or other information necessary for the correct preparation of the said lists, and to examine the said persons upon oath, and to require such persons to produce any books, registers, documents or papers in their possession, and considered necessary for the said purpose, and any person refusing to attend upon any such summons or to give the evidence or information asked for, or to produce any such book, register, document or paper, shall be liable to the same penalties as would apply in case of a similar refusal by a witness in an ordinary summary proceeding before a Justice.

**14**. The Justices of each of the said Districts shall, on or before the day appointed for that purpose by them, make out according to the form of schedule E. to this Chapter, a general alphabetical list of all persons within the several divisions of their respective districts entitled to vote at such election, or who shall claim to be inserted in such list as electors in the election of a member for such District.

**15**. The Justices, if they shall have reasonable cause to believe that any person so claiming, or whose name shall appear in the register for the time being, is not entitled to vote in the election of a member for the District in which his place of residence is stated to be situate, shall add the word "objected to" opposite the name of every such person on the margin of such list.

**16**. The Justices, or one of them, in each respective division of the District, shall sign such list, and shall cause a sufficient number of copies thereof to be written or printed, and to be fixed on the Court House or near to the doors of all the churches or other places of public worship therein; or, if there be none such, then to be posted up in some public places therein.

**17.** The Justices shall likewise keep a true copy of such list, to be perused by any person, without payment of any fee, at all reasonable hours during the period of the sitting of their respective Courts of Revision, after the said list shall have been made

**18.** Every person who shall be upon the register for the time being of electors for any District, or any constable of a District, or person appointed to prepare a list of electors, may object to any person as not having been entitled to have his name inserted in any list of electors for such District; and every person so objecting (save and except Justices objecting in the manner hereinbefore mentioned) shall, on or before the opening of the Court of Revision, give or cause to be given a notice in writing, in the form of schedule D. to this chapter, or the like effect, to the Justices who shall have made out the list in which the name of the person so objected to shall have been inserted; and the person so objecting shall also, on or before the said time, give to the person objected to, or leave at his place of abode as described in such list, a note in writing according to the form of said schedule D., or the like effect.

**19.** On a day to be appointed and publicly notified by them, the Justices shall, once in every four years, except as hereinafter mentioned, hold open Courts of Revision at the places within their respective divisions of districts, and such Court shall be held by one or more Justices; and such Justices respectively shall there produce the several lists of electors so taken for that division of such district and also a list of the persons objected to; and the persons who have made the several lists shall answer upon oath all such questions as the said Justices may put touching any matter necessary for revising the list of electors. And such Justices shall retain on the list of electors the names of all persons to whom no objection shall have been made in the manner hereinbefore mentioned, and shall also retain on the list of electors the name of every person who shall have been objected to, unless the party objecting shall appear by himself, or some one on his behalf, in support of such objection; and where the name of any party, inserted in the list of electors, shall have been objected to by any person, and such person so objecting shall appear by himself, or some one on his behalf, in support of such objection, every such Justice shall require it to be proved that the person so objected to was entitled on the opening of the said Court of Revision to have his name inserted in the list of electors; and in case the same shall not be proved to the satisfaction of such Justices, the name of such person shall be expunged from the list; and if it shall happen that any person who shall have given to the said Justice, or the person who has prepared the list respectively, due notice of his claim to have his name inserted in the list of electors, shall have been omitted by such Justice or person from the said list, such Justice shall, upon the revision of such list, insert the name of the person so omitted, in case it shall be proved to the satisfaction of such Justice that such person gave due notice of his claim, and that he was entitled, on the opening of the said Court of Revision, to be inserted in the list of electors.

**20**. After the formation of a revised list of electors, no person whose name shall be upon such list shall be required thereafter to make the claim prescribed in section 19, so long as he shall retain the qualification and continue in the place of abode described in such list.

**21**. Any person who may have been absent from his usual dwelling place during the whole time when the list was posted up in such place, and whose name shall have been omitted from such list, may at any time before the closing of the Court of Revision, give notice to the revising Justice of his claim to be inserted in such list, and such revising Justice shall, if satisfied of his right to be inserted in such list, insert his name therein accordingly.

**22**. The parties revising the list of electors shall strike therefrom the names of all persons disqualified as paupers under section 5.

**23**. All Justices, holding any Court under this chapter, shall have power to adjourn the same from time to time for the space of ten days, and from any one place to any other place within their respective divisions of the district; and shall have power to administer oaths to all persons objected to or claiming to be inserted in any such lists and to all witnesses who may be tendered on either side; and if any person taking any oath under this chapter shall wilfully swear falsely, such person shall be guilty of perjury, and be punished accordingly.

**24**. Such Justices shall, upon such hearing in open Court, determine upon the validity of all claims and objections, and shall write their names or initials against the names respectively struck out or inserted, and against any part of the said lists in which any mistake shall have been corrected, and shall sign their name to every page of the several lists revised; and such lists of electors so signed shall be kept among the records of the Courts of Sessions of the respective districts.

**25**. Such Justices shall forthwith cause the said lists to be truly copied, in alphabetical order, in a book or register; and shall prefix to every name so copied out its proper number, beginning the number from the first name, and so continuing to the last name.

**26**. Such register or book of electors shall be completed and delivered to the chief Magistrate of the district in sufficient time before the then or next General or Quarter Sessions of the Peace for such district; and a true copy of such register shall be transmitted by such chief Magistrate immediately after such General or Quarter Sessions to the Colonial Secretary.

**27**. Any person claiming to vote in the election of a member for any district aforesaid, who shall feel aggrieved by the decision of any Justice as to his claim to vote, may appeal to the then or next General or Quarter Sessions of the Peace for the district; and the Justices, at such General

or Quarter Sessions, shall revise and alter the said list of voters, by the addition of the name of such person, if it shall appear to the satisfaction of such Justices that such person was, on the opening of the Court of Revision, duly qualified to vote as an elector of the said district.

**28.** In the event of any election being appointed to take place at any time before the expiration of the period of four years limited for taking and revising the said lists, and after the expiration of one year from the time when such lists shall have been last taken and revised, the Governor in council may cause the provisions of this chapter to be put into operation in any of the districts of this Island, with such alterations in the manner of taking and revising the said lists as may be found necessary.

**29.** A stipendiary Magistrate or Justice, by direction of the Governor in Council, may exercise all the powers conferred by this chapter on a Court of General or Quarter Sessions in any district or sub-division of district where such Sessions may not be held.

## PART III.

### ELECTION OF MEMBERS OF THE HOUSE OF ASSEMBLY.

**30.** Every writ for the election of a member of the House of Assembly shall be dated and be returnable on such day, and shall be addressed to such person, as the Governor shall determine, and such person shall be the Returning Officer at such election: Provided always, that if the person to whom the writ is addressed refuses, or is disqualified, or is unable to act, the Governor may appoint another person to be such Returning Officer.

**31.** None of the persons hereinafter mentioned shall be appointed Returning Officers, or Deputy Returning Officers, Election Clerks or Poll Clerks, or to any other office in connection with the said election or registration of voters therefor, that is to say:—

(*a.*) Members of the Executive Council.

(*b.*) Members of the Legislative Council or House of Assembly.

(*c.*) Ministers, priests, or ecclesiastics of any religious faith or worship.

(*d.*) Judges of the Supreme or District Courts.

(*e.*) Persons who have served in the Legislature in the session immediately preceding the election, or in the then present session.

(*f.*) Persons who have been found guilty by any Court for the trial of controverted elections, or other competent tribunal, of any offence or dereliction of duty under this chapter.

(*g.*) Persons who are intending candidates.

**32**. The writs of election shall be in the form of schedule F. to this chapter, and in case of elections held out of the electoral districts of St. John's, shall, immediately after the issuing thereof, be transmitted to the respective Returning Officers.

**33**. The Governor shall, by Proclamation, fix the days and places of nomination and the days of polling in the several electoral districts, and not less than twenty-one days shall intervene between the publication of the Proclamation and the day of polling. At every general election one and the same day shall be fixed for the nomination, and one and the same day for the polling in all the electoral districts, and the day for holding the poll shall be the seventh day next after the expiration of the day fixed for the nomination of candidates, that is on the same or corresponding day of the week next after that on which the nomination has taken place, or if such seventh day is a statutory holiday, then on the next following day not being Sunday or a statutory holiday. The Court House, or some other public or private building in the most convenient locality for the great body of the electors of each electoral district, shall be the place fixed for the nomination of candidates.

**34**. The Governor, by Proclamation, shall constitute polling districts or sections and appoint polling stations, and may, if expedient, by Proclamation, from time to time, alter the same or appoint additional polling stations.

**35**. At the same time that the election writs are transmitted the Colonial Secretary shall provide each Returning Officer with the following materials :—

(*a*.) A duly certified list of electors qualified to vote in the electoral district.

(*b*.) Ballot box for each polling station in the electoral district.

(*c*.) Materials for voters in each polling station of the electoral district to mark their ballot papers.

(*d*.) At least ten copies for each polling station of the printed directions for the guidance of voters set forth in schedule O. of this chapter.

(*e*.) Copies of the Proclamation mentioned in sections 33 and 34 of this chapter.

**36**. The ballot boxes shall be made of durable material, each box being provided with a lock and key and a convenient aperture for depositing the ballots therein, and shall be so constructed as to secure the ballots deposited therein from loss or illegal interference Such ballot boxes shall be under the control of the Colonial Secretary, who shall preserve them for use at elections.

**37**. On receiving the writ of election the Returning Officer shall endorse thereon the date of his receiving the same, and shall forthwith take the oath of office in form schedule G, which shall be administered by a Justice of the Peace.

**38**. After taking the oath of office, the Returning Officer shall forthwith, by writing, in the form of schedule H appoint an Election Clerk, and may at any time during the election appoint in the same manner another Election Clerk, in case the one so appointed shall resign, refuse, or be unable to perform his duties as such. The Election Clerk shall, before acting, take the oath of office in the form of schedule I.

**39**. No person shall act as Deputy Returning Officer, Election Clerk or Poll Clerk for the purposes of an election who is at the time of the election, or has within one month before the election, been in the constant or permanent service of a candidate, or who has been employed by any candidate or his agent, or any other person on his behalf or in his interest in or about the election, under a penalty not exceeding one hundred dollars, to be recovered from such person in a summary manner before a stipendiary Magistrate by any person who shall sue for the same.

**40**. The duty of the Election Clerk shall be to assist the Returning Officer in the performance of his duties, and to act in his stead as Returning Officer whenever the Returning Officer shall be unable or shall refuse to perform his duties, and shall not have been replaced by another, and in such a case he shall have the same power to appoint an Election Clerk as section 38 of this chapter confers upon the Returning Officer first appointed.

**41**. On receiving the Proclamation mentioned in sections 33 and 34 of this chapter, the Returning Officer shall cause copies of them to be posted up at the several Polling Stations within the Electoral District, together with notices in the form schedule J to this chapter, of the place and time of nomination, the places and time of polling, and the place of declaring the result of the poll.

**42**. Where the Returning Officer or his Deputy is by this chapter required or authorized to give any public notice, and no special mode of giving the same is mentioned, he may give the same by advertisement, placards, hand-bills, or such other means as he may think best calculated to give the information to the electors.

**43**. The time appointed for the nomination of candidates shall be from the hour of ten a. m. until the hour of two in the afternoon of the day fixed for that purpose.

**44**. The nomination of candidates shall be by writing, in the form of schedule K, signed by two electors, giving the names, residence and des-

cription of each candidate, and filed with the Returning Officer at the time and place of nomination, or at any other place, and at any other time between the date of the Proclamation, mentioned in section 33, and the time of nomination. Each candidate shall be nominated by a separate nomination paper; but the same electors, or any of them, may subscribe as many nomination papers as there are members to be elected.

**45**. No nomination paper shall be valid and acted upon unless it shall be accompanied by the written consent of the person therein nominated, except when the candidate is absent from the place at which the nomination is held, when such absence shall be stated in the nomination paper; nor unless the sum of one hundred and fifty dollars be paid to the Returning Officer on delivery of the nomination paper. Of the sum so paid, the Returning Officer shall return one hundred and thirty dollars to any candidate elected without opposition, and the sum of seventy-five dollars to any successful candidate in a contested election, and the same amount to any unsuccessful candidate who shall poll one-third of the total number of votes polled by any successful candidate at the same election in the same Electoral District.

**46**. The Returning Officer shall require the oath of one or more electors that the several persons signing any nomination paper are electors and entitled to vote; that they have signed the paper in the presence of such persons or one of them; that the candidate has signed the consent produced, or is absent from the place where such nomination is held and has consented to his nomination. Such oath shall be in the form of schedule L to this chapter, and the fact of its having been taken shall be stated by the Returning Officer on the back of the said nomination paper.

**47**. The Returning Officer being furnished with the nomination paper mentioned in section 44, and sections 45, 46 and 48 having been complied with, shall publicly proclaim that such person has been duly nominated as a candidate for election, and shall give a certified list of the candidates nominated to any candidate or agent applying for the same.

**48**. The qualification of persons to be elected to serve as members of the House of Assembly shall be a net annual income, arising from any source whatever, of four hundred and eighty dollars, or the possession of property exceeding two thousand four hundred dollars, clear of all incumbrances; and the length of the period of residence within the said island shall be a period of two years next preceding such election; and every candidate for such election shall be a male British subject of the full age of twenty-one years, of sound understanding, and never having been convicted in due course of law of any infamous crime.

(*a*.) Every candidate for election present at the nomination of candidates shall, before nomination, deliver, or cause to be delivered, to the Returning Officer a declaration signed by himself and

sworn before the Returning Officer, which declaration shall be according to one of the forms in schedules M. 1 and M. 2 of this chapter, according as the qualification may be in income or property.

(*b*.) Before any candidate for election not present at the nomination of candidates shall be put in nomination, a declaration in the form of schedule M. 3 or M. 4, shall be delivered to the Returning Officer, according as the qualification is in income or property, signed by the candidate or by two electors, and sworn before a stipendiary Magistrate, a Justice of the Peace, or the Returning Officer.

**49**. Whenever only one candidate, or only such a number of candidates as are required by law to be elected to represent the Electoral District for which the election is held, has or have been nominated within the time fixed for that purpose, the Returning Officer shall forthwith make and transmit to the Colonial Secretary his return upon the back of the Writ for holding such election, that such candidate or candidates, as the case may be, is, or are, duly elected for the said Electoral District; of which return he shall deliver or send, within forty-eight hours, a duplicate or certified copy to each person elected, and such return shall be in the form of schedule N. to this chapter.

**50**. The Returning Officer shall accompany his return to the Colonial Secretary with a report of his proceedings, and of any nomination proposed and rejected for non-compliance with the requirements of this chapter.

**51**. If more candidates than the number required to be elected for the Electoral District are nominated in the manner required by this chapter, it shall be the duty of the Returning Officer to grant a Poll for taking the votes of the electors, and to cause to be posted up notices of his having granted such Poll in the form of schedule O, indicating the names (alphabetically arranged), residence and occupation of the candidates so nominated, which notices shall, as soon as practicable after the nomination, be posted or displayed at all the places where the Proclamation for the election has been posted up.

**52**. Any candidate nominated may withdraw at any time after his nomination and before the closing of the poll, by filing with the Returning Officer a declaration on oath, in writing, and signed by himself, to the effect that he withdraws from such nomination freely and voluntarily, and that he has not received, directly or indirectly, from any person or body, any gift, loan, offer, promise, or any promise to procure or to endeavour to procure any money, office, place or appointment, or other consideration for such withdrawal, (which oath shall be in the form of schedule P to this chapter), and any votes cast for the candidate who shall have so withdrawn shall be null and void. And in case after the withdrawal there should remain but one candidate, or no more than the number to be

elected, then it shall be the duty of the Returning Officer to return as duly elected, in the manner prescribed in section 49, the candidate or candidates so remaining, without waiting for the day fixed for holding the poll, or for the closing of the poll, if such withdrawal be filed on the polling day.

**53.** It shall be the duty of the Returning Officer, on a poll being granted, when the election is to be held in St. John's East or West, Harbor Grace, Carbonear, Brigus, Bay-de-Verds, Harbor Main or Ferryland, and in other Districts, upon the receipt of the election writ—

(*a.*) To appoint, by writing, in the form of schedule Q to this chapter, one Deputy Returning Officer for each polling station comprised in the Electoral District, who shall, before acting as such, take the oath of office in the form of schedule R to this chapter.

(*b.*) To furnish each Deputy Returning Officer with a copy of the list or of such portion of the list as contains the names, arranged alphabetically, of the electors qualified to vote at the polling station for which he is appointed, such copy being first certified by himself.

(*c.*) To furnish each Deputy Returning Officer, in Districts in which electors are permitted by Proclamation under section 70 of this chapter to vote at any polling station in the District, with a full and complete copy of the revised list of electors at least two days before the day of election.

(*d.*) To furnish to each Deputy Returning Officer, at least two days before the polling day, a ballot box, together with the lock and key thereof.

(*e.*) To furnish each Deputy Returning Officer with a number of ballot papers equal to the number of voters entitled to vote in his booth, (all being of the same description and as nearly as possible alike), and consecutively numbered upon the back and upon the counterfoil, as prescribed in section 54 of this chapter, and with the necessary materials for voters to mark their ballot papers; and to keep a correct record of the number of ballot papers furnished to each Deputy Returning Officer.

(*f.*) To furnish each Deputy Returning Officer with at least ten copies of printed directions for the guidance of voters in voting, as set forth in schedule O. to this chapter, which printed directions the Deputy Returning Officer shall, before or at the opening of the poll on the day of polling, cause to be posted up in some conspicuous places outside of the polling station and also in each compartment of the polling station.

**54.** The ballot shall consist of a paper (in this chapter called a ballot paper) shewing the name and description of the candidates, alphabetically arranged in order of their surnames, or if there be two or more candidates with the same surname, in order of their other names; and such ballot paper shall be in the form of schedule S. to this chapter Each ballot paper shall have a number printed or written on the back, and shall have attached a counterfoil with the same number printed or written on the face. All the ballot papers shall be numbered consecutively from one upwards.

**55.** The Returning Officer may, if he think fit, preside at any polling station, and the provisions of this chapter relating to a Deputy Returning Officer shall apply to such Returning Officer or Deputy Returning Officer.

**56.** Each Deputy Returning Officer shall forthwith appoint, by writing, in form schedule T. to this chapter, a Poll Clerk, who, before acting as such, shall take the oath in the form schedule U. to this chapter.

**57.** In case any Deputy Returning Officer should refuse or be unable to act, the Returning Officer may appoint another person to act in his place as Deputy Returning Officer, who, before acting as such, shall first take the oath prescribed in schedule R. to this chapter; and in case no such appointment be made, the Poll Clerk, without taking another oath of office, shall act as Deputy Returning Officer.

**58.** Whenever the Poll Clerk acts as Deputy Returning Officer, he shall, by writing, in the form of schedule V. to this chapter, appoint a Poll Clerk to act in his stead, who shall take the oath required by schedule U. to this chapter.

**59.** Any person producing to the Returning Officer or Deputy Returning Officer at any time a written authority from a candidate to represent him at the election or at any proceeding of the election, and making oath in the form of schedule W. to this chapter, shall be deemed an agent of such candidate within the meaning of this chapter.

**60.** Every Returning Officer or Deputy Returning Officer of an electoral district, and every partner or clerk of either of them, who acts as agent of any candidate in the management or conduct of his election for such electoral district, is guilty of a misdemeanor.

**61.** A candidate may himself undertake the duties which any agent of his, if appointed, might have undertaken, or may assist his agent in the performance of such duties, and may be present with or without him at any place at which his agent may, in pursuance of this chapter, be authorized to attend.

**62.** When in this chapter any expressions are used requiring or authorizing any act to be done, in the presence of the agents of the can-

didates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done; and the non-attendance of any agents or agent at such time and place shall not, if the act or thing be otherwise duly done, invalidate in anywise the act or thing done.

**63**. The poll, when granted, shall be held at each polling station in a building of convenient access, (not being a place of public worship or licensed under the License Act), with an outside door for the admittance of the voters, and having, if possible, another door through which they may leave after having voted. Every polling station shall be furnished with compartments, in which the voters can mark their votes screened from observation, and without means of ingress or egress during the polling, except through the room in which the ballot box is kept, and it shall be the duty of the Returning Officer to direct, and of the Deputy Returning Officer to see, that a sufficient number of such compartments are provided at each polling station.

**64**. Every Returning Officer, Deputy Returning Officer, clerk or agent, or other persons authorized to attend at a polling station or at the counting of the votes shall, before entering upon his duties or exercising his functions, make an oath of secrecy in the form of schedule X to this chapter, in the presence, if he be the Returning Officer, of a Justice of the Peace, or, in the absence of such Justice of the Peace, of the Deputy Returning Officer; and, if he be any other officer or agent, of a Justice of the Peace, of the Returning Officer, or of the Deputy Returning Officer.

**65**. (*a.*) Every officer, clerk and agent, in attendance at a polling station, shall maintain, and aid in maintaining, the secrecy of the voting in such station, and shall not communicate to any person any information as to whether any person on the list of electors or supplementary list has or has not applied for a ballot paper or voted at that station.

(*b.*) No officer, clerk or agent, and no person whosoever, shall interfere with, or attempt to interfere with, a voter when making his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted.

(*c.*) No officer, clerk, agent, or other person shall communicate, at any time to any person, any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted.

(*d.*) Every officer, clerk, agent, and other person in attendance at the counting of votes, shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at

such counting, or communicate any information obtained at such counting, as to the candidate for whom any vote is given in any particular ballot paper.

(*e*) No elector shall, except in the case provided for in section 77, show his ballot paper, when marked, to any person, so as to allow the name of the candidate for whom he votes to be known.

(*f*.) No person shall, directly or indirectly, induce, or endeavour to induce, any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

(*g*.) Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before a stipendiary Magistrate or two Justices of the Peace, to imprisonment for any time not exceeding six months, with or without hard labor.

**66**. Every Deputy Returning Officer shall, on the day preceding the day appointed for taking the poll, and after at least twenty-four hours public notice, attend at the place appointed as the polling booth, at which such Deputy Returning Officer is to preside, and shall, from the hour of nine a. m. to eight p. m., publicly receive and hear applications to be admitted to vote at such polling booth from any persons whose names may have been omitted from the list of duly qualified voters entitled to vote at his booth, but who shall claim to be otherwise qualified voters and entitled to vote at such Booth. Every such applicant shall answer upon oath, to be administered by the Deputy Returning Officer, all such questions touching his qualification to vote as shall be prescribed by rules to be made and published by the Governor in Council. Upon its being made to appear to the Deputy Returning Officer *prima facie* that such applicant is qualified to vote, the Deputy Returning Officer shall enter his name upon a separate list or register, to be called supplementary list of electors, containing the names of all such applicants, and such other particulars as shall be prescribed by rules as above provided. On the day of polling every such person shall be admitted to vote, subject to enquiry and determination by the Court upon a trial of a controverted election as to the fact of his qualification as a voter.

**67**. Each Deputy Returning Officer shall open the poll assigned to him at the hour of eight o'clock in the morning, and keep the same open until four o'clock in the afternoon, and shall, during that time, receive, in the manner hereinafter prescribed, the votes of the electors duly qualified to vote at such polling place.

**68**. At the hour fixed for opening the poll, the Deputy Returning Officer and Poll Clerk shall, in the presence of the candidates, their

agents, or not less than three voters whose names shall be recorded on the poll book, open the ballot box and ascertain that there are no ballots or other papers in the same, and shall then lock it up and place their seals upon it in such a manner as to prevent its being opened without breaking such seal, and shall place it in view for the receipt of ballot papers, and keep it so locked and sealed. Immediately after the ballot box is locked, as herein provided, the Deputy Returning Officer shall call upon the electors to vote.

**69.** In addition to the Deputy Returning Officer and the Poll Clerk, the candidates and their agents (not exceeding one for each candidate) in each polling station, and, in the absence of agents, one elector to represent each candidate on the request of such elector, and no others, shall be permitted to remain in the room where the votes are given during the whole time the Poll remains open: Provided always, that any agent having a written authorization from a candidate, and making oath as provided in section 59, shall always be entitled to represent such candidate in preference to, and to the exclusion of, any elector who may otherwise claim the right of representing such candidate.

**70.** Each elector shall vote at the polling station in which he is qualified to vote and no other, except otherwise permitted by Proclamation or by the provision of section 71 of this chapter; and it shall be the duty of the Returning Officer to secure the admittance of every elector into the polling booth, and to see that he is not impeded or molested at or about the polling booth.

**71.** A Deputy Returning Officer, Poll Clerk, or agent, entitled to vote at an election, shall have the right to vote at the polling station where he shall be actually engaged during polling day, instead of at the station where he would otherwise have been entitled to vote.

**72.** The electors shall be introduced one at a time into the room where the poll is held, each shall declare his name, surname and addition, which shall be entered or recorded in the voters' list, to be kept for that purpose by the Poll Clerk, and if the same be found on the list of electors for the polling station, he shall receive from the Deputy Returning Officer a ballot paper: Provided, that if the candidate or his agent do declare, upon oath, that he has a *bona fide* reason to believe that the applicant for a ballot paper is not the person he claims to be, or that he is not of the full age of twenty-one years, or that he has voted before at such election, either at that or any other polling place, or has been subject to bribery, such elector shall take the oath of qualification in the form of schedule Y.

**73** No person shall vote more than once in the same electoral district at the same election, but each elector may vote for as many candidates as are required to be elected to represent the electoral district for which the election is held

**74.** (1.) If a person representing himself to be a particular elector applies for a ballot paper after another person has voted as such elector, the applicant, upon taking the oath in the form of schedule A. A. to this chapter, and otherwise establishing his identity to the satisfaction of the Deputy Returning Officer, shall be entitled to receive a ballot paper, on which the Deputy Returning Officer shall put his initials, the number corresponding to the number entered upon the voters' list opposite the name of said elector, and the words "second voter"; and he shall thereupon be entitled to vote as any other elector.

(2.) The name of such voter shall be entered upon the voters' list, and a note shall be made of his having voted on a second ballot paper issued under the same name, and of the oath of identity having been required and made, as well as of any objections having been made on behalf of any, and which, of the candidates.

**75.** The votes shall be given by ballot. At the time of voting the ballot paper shall be marked on the back with the initials of the Deputy Returning Officer, detached from the counterfoil, and delivered to the elector within the polling booth, and the number of such voter upon the voters' list shall be marked on the counterfoil. The Deputy Returning Officer shall instruct the elector how and where to affix his mark, and how to fold his ballot paper, but without enquiring or seeing for whom the elector intends to vote, except in the case provided for in section 77.

**76.** The elector, on receiving the ballot paper, shall forthwith proceed into a compartment of the polling booth and there mark his ballot paper, making a cross on any part of the ballot paper within the division or divisions (if more than one are to be elected) containing the name (or names) of the candidate (or candidates) for whom he intends to vote, after which he shall fold it up so as to conceal his vote, and hand it so folded up to the Deputy Returning Officer, who shall without unfolding it, ascertain by examining his initials and the number upon it, and by comparing the number upon it with the number upon the counterfoil, that it is the ballot paper which he furnished to the elector, and shall then immediately, and in the presence of the elector, place the ballot paper in the ballot box.

**77.** The Deputy Returning Officer, on application of any voter who is unable to read, or incapacitated by blindness or other physical cause from voting in the manner prescribed by this chapter, shall assist such voter, within the compartment, by marking his ballot in the manner directed by the voter, in the presence of a sworn agent of each candidate, or of a sworn elector representing him, if such agent or elector be present in the polling booth, and of no other person, and by placing such ballot paper in the ballot box. And the Deputy Returning Officer shall cause

a list to be kept of the names of voters whose ballot papers have been so marked, in pursuance of this section, with the reason why each ballot paper was so marked.

**78**. When application is made to the Deputy Returning Officer by any voter who is unable to read or is incapacitated by blindness or other physical cause from voting in the manner prescribed in this chapter, before marking his ballot paper the Deputy Returning Officer shall require the voter making such application to make oath of his incapacity to vote without assistance in the form of schedule B. B.

**79**. No voter, having refused to take the oath or affirmation required as aforesaid by this chapter, when requested to do so, shall receive a ballot paper or be admitted to vote, or upon leaving the booth shall be permitted to return.

**80**. A voter who has inadvertently dealt with the ballot paper given him in such manner that it cannot be conveniently used, may, on delivering the same to the Deputy Returning Officer, obtain another ballot paper in the place of that so delivered up.

**81** Every elector who takes his ballot paper out of the polling booth shall incur a penalty of two hundred dollars, or in default of payment shall be liable to imprisonment for a period not exceeding six months.

**82**. The Poll Clerk shall keep a voters' list in the form of schedule C. C. to this chapter, on which he shall inscribe—

(*a*.) The name, occupation and residence of the person who enters the booth to vote.

(*b*.) The word "voted" opposite the name of each elector as soon as his ballot paper has been deposited in the ballot box.

(*c*.) Opposite the name of any voter, whose ballot paper has been marked for him, the reason why such ballot paper was so marked.

(*d*.) The words "second ballot" opposite the name of any voter to whom a second ballot paper has been delivered because of the defacement or destruction of the first.

(*e*.) The words "second voter" opposite the name of any voter to whom a ballot paper has been given, after another has voted in the same name, and who has taken the oath of identity prescribed in section 74.

(*f*.) The word "supplementary list" opposite to the name of every person who has been permitted to vote under the provisions of section 68 of this chapter.

(*g.*) The nature of an objection, if any, made against any person applying for admission to vote.

**83**. Every voter shall vote without undue delay, and shall quit the polling booth so soon as his ballot paper has been put into the ballot box.

**84**. If, by reason of obstruction or other cause, any returning officer or his deputy shall be prevented or hindered from duly proceeding or taking the poll, he shall adjourn the poll till the next day, not being Sunday, and to the next succeeding day also, if necessary, in order to complete the taking of the poll.

**85**. The Deputy Returning Officer of each booth, immediately after the close of the poll, shall, in the presence of the Poll Clerk and the candidates or their agents, and, if the candidates or their agents are absent, then in the presence of three electors, make up into separate packets, sealed with the official seal of the booth, and the seals of such candidates or their agents, and if the candidates and their agents be absent, of such of the said electors as desire to affix their seals,—

(*a.*) The ballot box in use at his booth, unopened, but with the key attached ; and

(*b.*) The unused and spoilt ballot papers placed together ; and

(*c.*) The counterfoils of the ballot papers ;

and shall deliver such packets to the Returning Officer or his messenger, appointed under the provisions of section 87, who shall, before receiving the ballot boxes and packets of papers, take the oath in the form of schedule F. F. These packets shall be accompanied by a statement in writing, made by the Deputy Returning Officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of—

(*a.*) Ballot papers in the ballot box ;

(*b.*) Unused and spoilt ballot papers.

The Deputy Returning Officer and Poll Clerk shall, respectively, take the oaths in the form of schedules D. D. and E. E. to this chapter, which shall be annexed to the statements above mentioned.

**86**. No person, except by order of the Supreme Court or a Judge thereof having cognizance of an election petition complaining of an undue return or undue election, shall open the packets of counterfoils after the same have been once sealed up, or be allowed to inspect any such counterfoils after the same have been once sealed up by the Deputy

Returning Officer: Provided that such order shall not be made by the said Court or Judge until it has been proven and declared on the trial of such petition that the vote of the electors or an elector is invalid, and provided that, in the making and carrying into effect of any such order, care shall be taken that the manner in which any other than the elector or electors, whose vote shall be declared to be invalid, may have voted, shall not become known or discovered.

**87.** The Returning Officer shall appoint a person or persons, by a writing in the form of schedule F. F., to collect the ballot boxes and parcels from the several polling stations in his electoral district, or to convey the same to the Colonial Secretary. Such person or persons shall, before proceeding to discharge the duties aforesaid, take the oath prescribed in schedule G. G. to this chapter, before the Returning Officer, a deputy returning officer, or a justice of the peace, and upon the performance thereof, the oath in schedule H. H. to this chapter.

**88.** The Returning Officer shall make arrangements for counting the votes in the presence of the candidates, or of the agents of the candidates, as soon as practicable after the close of the poll, and shall give to the candidates or their agents notice in writing of the time and place at which he will begin to count the same.

**89.** The Returning Officer, his assistants and clerks, the candidates, and the agents of the candidates, and no other person, shall be present at the counting of the votes, except peace officers, who may be present with the sanction of the Returning Officer.

**90.** In case the ballot boxes should not all have been returned on the day fixed for counting the votes, the Returning Officer shall adjourn the proceedings to a subsequent day, such subsequent day not being more than a week later than the day originally fixed for the purpose of counting the votes.

**91.** In case the ballot boxes, or any of them, have been destroyed, lost, or for any other reason are not forthcoming within the day so fixed, the Returning Officer shall ascertain the cause of the disappearance of the ballot boxes, and shall call on each deputy returning officer whose ballot box is missing, or any other person having the same, for the copy of the "voters' list" kept in the polling booth over which the said Deputy Returning Officer presided on the day of polling, which copy shall be verified by the Deputy Returning Officer and Poll Clerk, upon oath, in the form of schedule I. I to this chapter, before a stipendiary magistrate, a justice of the peace, or the Returning Officer; and in case such voters' list cannot be obtained, he shall ascertain, by such evidence as he is able to obtain, the total number of persons who voted at the polling station, the ballot box of which is missing, and he may adjourn the counting from time to time, but not for a longer period than one week in all for the purpose of obtaining such voters' list or evidence.

**92.** Upon the receipt by him of the missing ballot box, the voters' list or evidence of the total number of votes given at the polling station, the ballot box of which is missing, the Returning Officer shall proceed to count the votes in the presence of the Election Clerk, the candidates or their agents, if present, and three electors, if the candidates or their agents be not present; and, before doing so, shall open each ballot box, and taking out the papers, shall count and record the number thereof, and then mix together the whole of the papers contained in all the ballot boxes.

(1.) The Returning Officer, while counting and recording the numbers of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers on the backs of such papers.

(2.) Any ballot paper not supplied by a deputy returning officer, or on which votes are given to more candidates than are to be elected, or on which anything is written or marked by which the voter can be identified other than the numbering in sections 53 and 54, or which is unmarked, or from which it is uncertain for which candidate the elector voted, shall be void and shall not be counted.

(3.) The Returning Officer shall endorse "rejected" on any ballot papers which he may reject as void.

(4.) The Returning Officer shall then count up the votes given for each candidate upon the ballot papers not rejected.

(5.) The other ballot papers being counted, and a list kept of the number of votes given to each candidate, and of the number of rejected ballot papers, all the ballot papers indicating the votes given for candidates shall be put into a ballot box or boxes marked 'accepted," and these ballot boxes, sealed with the seal of the Returning Officer and Election Clerk, and of such of the candidates or their agents as desire to affix their seals, shall be transmitted to the Colonial Secretary in manner provided in section 101; those rejected shall be put back into a different ballot box or boxes marked "rejected," and the sealed packages of counterfoils shall be put into a ballot box or boxes marked "counterfoils."

**93.** The Returning Officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshments, and excluding (except so far as he and the agents or candidates agree) the hours between eleven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the Returning Officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the candidates or their agents as desire to

affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

**94.** The Returning Officer shall take a note of any objection made by any candidate, his agent, or any elector present, to any ballot paper found in the ballot box, and shall decide any question arising out of the objection; and the decision of such Returning Officer shall be final, subject only to reversal upon a recount before a Judge of the Supreme Court, as hereinafter provided, or on petition or proceedings questioning the election or return. Each objection to a ballot paper shall be numbered, and a corresponding number placed on the back of the ballot paper, and initialed by the Returning Officer.

**95.** If, upon summing up the vote for each candidate, at the conclusion of the counting, it be found that the number of ballot papers deposited in the missing ballot box or boxes, if added to the votes appearing by the count to have been given to any candidate, could not affect the result of the election, the Returning Officer shall declare elected the candidate or candidates appearing to have a majority of votes

**96.** If, upon summing up the votes for each candidate, at the conclusion of the counting, it be found that the number of ballot papers deposited in the missing ballot box or boxes, if added to the votes appearing by the count to have been given to any candidate, might affect the result of the election, the Returning Officer shall direct that another poll shall be held at and for such station, at a time to be appointed by him, as soon as may be convenient, within not more than twenty days from the holding of the first poll, of which due notice shall be given; and the Returning Officer shall have power to postpone the declaration of the poll until after the holding of the said second poll at the said polling station. At such second poll only such voters as shall appear by the voters' list furnished by the Deputy Returning Officer, or by the evidence possessed by the Returning Officer to have voted at the first poll, shall be permitted to vote. The said second poll shall be conducted in all respects in the same manner and subject to the same regulations as are hereinbefore provided in relation to the first poll, and shall in all respects, for all purposes, be held to be of the same force and effect as if the same had taken place upon the day first appointed for taking the poll.

**97.** Upon the receipt of the ballot box or boxes used at such second poll, he shall proceed to count the votes in the manner and subject to the conditions hereinbefore contained in reference to the counting of votes, and upon summing up the votes at such second poll, with the votes previously counted, he shall declare elected the candidate or candidates having a majority of votes.

**98.** Whenever, upon the final addition of votes by the Returning Officer, an equality of votes is found to exist between any two or more of the candidates, and the addition of a vote would entitle any of such candi-

dates to be declared elected, the Returning Officer shall give such additional or casting vote.

**99.** At the conclusion of the counting the Returning Officer shall make out a statement in writing, shewing—

(*a.*) The number of ballot papers sent by him before polling day to each deputy returning officer.

(*b.*) The number of ballot papers stated by each deputy returning officer to be in the ballot box, delivered to the Returning Officer's messenger, and the number of ballot papers found by him in each ballot box at the commencement of the counting.

(*c.*) The number of unused and spoilt ballot papers stated by each deputy returning officer to be in the package delivered to the Returning Officer's messenger, and the number of such unused and spoilt ballot papers found by him in each package at the conclusion of the counting.

(*d.*) The number of ballot papers accepted by him and the number rejected.

(*e.*) The number of votes upon the accepted ballot papers for each candidate.

Such statement shall be in the form of schedule J. J., and shall be sworn before a stipendiary magistrate or justice of the peace. The Returning Officer shall make and keep a copy of such statement, and certified copies shall be delivered to any candidate or his agent applying for the same, and the original shall be sent with the return to the Colonial Secretary, who shall cause it to be published in the *Royal Gazette*.

**100.** The Returning Officer shall, immediately after the due execution of the writs, make and transmit his return upon the back of the election writ to the Colonial Secretary, that the candidate or candidates having the largest number of votes has or have been duly elected, and shall forward to each of the respective candidates a duplicate or copy thereof, and such return shall be in the form of schedule K. K. to this chapter. The Returning Officer shall also transmit to the Colonial Secretary, with his return, the original statements of the several deputy returning officers, together with the voters' lists used in the several polling districts, and all affidavits, certificates, and other documents used or required at such election, or which may have been transmitted to him by the deputy returning officers. The Returning Officer shall accompany his return to the Colonial Secretary with a report of his proceedings, in which report he shall make any observations he may think proper as to the state of the poll books as received by him.

**101.** The Returning Officer shall forward to the Colonial Secretary, by a messenger appointed under the provisions of section 87, together with

his return, all the ballot boxes, packets of ballot papers and packets of certificates in his possession, the ballot paper accounts, lists of votes, marked by the Deputy Returning Officer, statements relating thereto, sent by each, and all the original documents in his possession, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the district for which such election was held.

**102**. If any returning officer wilfully delays, neglects or refuses duly to return any person that ought to be returned to serve in the House of Assembly for any electoral district, such person may, in case it has been determined, on the hearing of an election petition respecting the election for such electoral district, that such person was entitled to have been returned, sue the Returning Officer having so wilfully delayed, neglected or refused duly to make such return of his election in any of the superior courts in this colony, and shall recover a sum of five hundred dollars, together with all damages he has sustained by reason thereof, and full costs of suit: Provided that such action be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of the trial of the petition relating to such election.

**103**. Upon the result of a recount being certified to him by a Judge of the Supreme Court, or immediately after the expiration of twenty-five days from the date of the return of any candidate or candidates, unless he shall in the meantime have been served with an order for a recount, the Colonial Secretary shall give notice in the *Royal Gazette* of the name or names of the candidate or candidates elected.

**104**. No person shall be allowed to inspect any ballot papers in the custody of the Colonial Secretary, except under the order of the Supreme Court or a Judge thereof, to be granted by such Court or Judge on being satisfied by evidence, on oath, that the inspection or production of such ballot papers is required for the purposes of instituting or maintaing a prosecution for an offence in relation to ballot papers, or for the purposes of contesting an election or return, and any such order for such inspection or production may be subject to such conditions as to persons, time, place and mode of inspection, and otherwise, as the Court or Judge making the same may think expedient

**105**. The Colonial Secretary shall retain, sealed for one year, all the ballot papers and counterfoils relating to an election forwarded to him in pursuance of this chapter by a returning officer, and then unless otherwise directed by an order of the Supreme Court, shall cause them to be destroyed, and all documents so forwarded other than ballot papers and counterfoils, shall, during the said year, be open to public inspection, and shall, with the ballot papers and counterfoils, at the end of the said year, be in like manner destroyed.

**106**. In case it is made to appear within twenty-one days after that on which the Returning Officer has made the final addition of the votes,

for the purpose of declaring the candidate (or candidates) elected, on the affidavit of any credible witness, to a Judge of the Supreme Court, that such witness believes that the Returning Officer, at any election in counting the votes, has improperly counted or rejected any ballot papers at such election, or has improperly summed up the votes, and in case the applicant deposits within the said time with the clerk of the court the sum of one hundred dollars as a security for the costs of the recount in respect of the candidate appearing by the addition to be elected, the said Judge shall, within four days after the receipt of the said affidavit by him, appoint a time to recount the votes or to make the final addition, as the case may be, and shall give notice in writing to the candidates or their agents of the time and place at which he will proceed to recount the same, or to make such final addition, as the case may be, and shall summon and command the Colonial Secretary, or a clerk in his office, to attend then and there with the parcels containing the ballots used at the election, which command the Colonial Secretary or clerk shall obey.

(*a.*) The said Judge, the Colonial Secretary or clerk, and each candidate or his agent appointed to attend such recount of votes, or in case any candidate cannot attend, then not more than one agent of such candidate, and if the candidates and their agents are absent, then at least three electors of the electoral district in which the recount is held shall be present at such recount of the votes.

(*b.*) At the time and place appointed, the said Judge shall proceed to recount all the votes or ballot papers returned by the Returning Officer, and shall, in the presence of the parties aforesaid, if they attend, open the sealed packets containing, (1), the used ballot papers which have been counted; (2), the rejected ballot papers; (3), the spoilt ballot papers,—and no other ballot papers.

(*c.*) The Judge shall, as far as practicable, proceed continuously, except on Sunday, with such recount of the votes, allowing only time for refreshment, and excluding (except so far as he and the parties aforesaid agree) the hours between six o'clock in the evening and nine on the succeeding morning. During the excluded time (and recess for refreshments) the said Judge shall place the ballot papers and other documents relating to the election close under his own seal and the seals of such other of the parties as desire to affix their seals, and shall otherwise take precautions for the security of such papers and documents.

(*d.*) The Judge shall proceed to recount the votes according to the rules set forth in section 94, and shall verify or correct the ballot paper account and statement of the number of votes given for each candidate; and upon the completion of such recount, or as soon as he has thus ascertained the result of the

poll, he shall seal up all the said ballot papers in separate packets, and shall forthwith certify the result to the Colonial Secretary, who shall then declare to be elected the candidate having the highest number of votes,—and in case of an equality of votes, the names of the candidates who have received an equal number of votes shall then and there be written upon cards, which cards shall be put into a box, and the Colonial Secretary, or his clerk, shall draw one of the said cards from the box in the same manner as is done by the Sheriff in drawing the names of jurors for a jury panel, and the candidate whose name is upon the card thus drawn shall be declared elected.

(*e.*) The Colonial Secretary, after the receipt of a notice from the Judge of a recount of ballots, shall delay giving notice in the *Royal Gazette* of the return of a candidate or candidates until he receives a certificate from the Judge of the result of such recount, and, upon receipt of such certificate, the Colonial Secretary shall, if necessary, correct the return made by the Returning Officer in accordance with such certificate

*f.*) In case the recount or addition does not so alter the result of the poll as to affect the return, the Judge shall order the costs of the candidate appearing to be elected to be paid by the applicant, and the said deposit shall be paid out to the said candidate on account thereof, so far as necessary, and the Judge shall tax the costs on giving his decision; and, if the deposit is insufficient, the party in whose favor costs are allowed shall have his action for the balance.

**107.** No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

**108.** No person shall be excused from answering any question put to him in any action, suit, or other proceeding in any Court, or before any Judge, Commissioner, or other tribunal, touching or concerning any election or the conduct of any person thereat, or in relation thereto, on the ground of any privilege or on the ground that the answer to such question will tend to criminate such person; but no answer given by any person claiming to be excused on the ground of privilege or on the ground that such answer will tend to criminate himself, shall be used in any criminal proceeding against such person other than an indictment for perjury, if the Judge, Commissioner, or president of the tribunal shall give to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid, and made full and true answers to the satisfaction of the Judge, Commissioner, or tribunal.

**109.** Every returning officer and deputy returning officer, from the time they shall respectively have taken the oath of office until the day

after the closing of the elections, shall be a conservator of the peace, invested with all the powers appertaining to a justice of the peace.

**110.** Such returning officer or deputy returning officer may require the assistance of justices of the peace, constables, or other persons present to aid him in maintaining peace and good order at such election, and may also, on a requisition, made in writing by any candidate, or by his agent, or by any two electors, swear in such special constables as he deems necessary.

**111.** Such returning officer or deputy returning officer may arrest, or cause to be arrested, by a verbal order, and placed in the custody of any constable or other person, any person disturbing the peace and good order at the election, and may cause such person to be imprisoned under an order signed by him until any period not later than the close of the poll.

**112.** Except the Returning Officer or his Deputy, or the Poll Clerk, or one of the constables or special constables appointed by the Returning Officer or his Deputy for the orderly conduct of the election or poll, and the preservation of the public peace thereat, no person shall, during any part of the day upon which the poll is to remain open, arm himself with offensive weapons of any kind, as fire arms, swords, staves, bludgeons, or the like, unless called upon to do so by lawful authority.

**113.** Every person offending against any of the provisions of section 112 of this chapter shall be deemed guilty of a misdemeanor, punishable by a fine not exceeding one hundred dollars or imprisonment not exceeding one month, or by both, in the discretion of the Court having cognizance of such offence.

**114.** Every person convicted of a battery committed during any day whereon any election or any poll for any election is begun, holden or proceeded with, within the distance of two miles of the place where such election or such poll is begun, holden or proceeded with, shall be deemed guilty of an aggravated assault, and shall be punished accordingly.

**115.** No spirituous or fermented liquors or strong drinks shall be sold at any hotel, tavern, or licensed house within the limits of any polling district during the whole of the polling day at any election for the House of Assembly, under a penalty not exceeding fifty dollars for every offence.

**116.** If any person unlawfully, either by violence or stealth, takes from any returning officer or poll clerk, or from any other person having the lawful custody thereof, or from its lawful place of deposit for the time being, or unlawfully or maliciously destroys, injures, or obliterates, or causes to be wilfully destroyed, injured, or obliterated, or makes, or causes to be made, any erasure, addition of names, or interlineation of names, in, to, or upon, or aids, counsels, or assists in so taking, destroying, injuring,

or obliterating, or making any erasure, addition of names, or interlineation of names, in, to, or upon any list of voters or writ of election, or any return to a writ of election, or any report, certificate, or affidavit, or any document or paper made, prepared or drawn out according to or for the purpose of meeting the requirements of this chapter, or any of them, every such offender shall be guilty of felony, and shall be liable to imprisonment, with or without hard labour, for a period not exceeding three years; and it shall not be necessary in any indictment for such offence to allege that the article in respect of which the offence is committed is of any value or the property of any person.

**117**. No person shall—

(*a.*) Forge or counterfeit, or fraudulently alter, deface, or fraudulently destroy any ballot paper or the official marks thereon; or

(*b.*) Without authority supply any ballot paper to any person; or

(*c.*) Fraudulently put into any ballot box any paper other than the ballot paper which is authorized by law to be put in; or

(*d.*) Fraudulently take out of the polling station any ballot paper; or

(*e.*) Without due authority destroy, take, open, or otherwise interfere with any ballot box or packet of ballot papers then in use for the purposes of the election.

(*f.*) No person shall attempt to commit an offence specified in this section.

Any contravention of this section shall be a misdemeanor, and any person found guilty thereof shall be punishable, if he be a returning officer, deputy returning officer, or other officer engaged at the election, by a fine not exceeding two thousand dollars, or by imprisonment for any term less than two years, with or without hard labor, in default of payment of such fine; and if he be any other person, by a fine not exceeding one hundred dollars, or by imprisonment for any term not exceeding twelve months, with or without hard labor, in default of paying such fine.

**118**. Any returning officer, deputy returning officer, election clerk or poll clerk, who refuses or neglects to perform any of the obligations or formalties required of him by this chapter, shall, for each such refusal or neglect, forfeit the sum of two hundred dollars to any person suing for the same, together with all damages occasioned or sustained thereby, with full costs of suit.

**119**. Every officer and clerk who is guilty of any wilful misfeasance or any wilful act or omission in violation of this chapter, shall forfeit to

any person aggrieved by such misfeasance, act or omission, a sum not exceeding five hundred dollars, in addition to the amount of all actual damages thereby occasioned to such person.

**120**. All damages, penalties and forfeitures (other than fines in cases of misdemeanor imposed by this chapter) shall be recoverable with full costs of suit by any person who may sue for the same, by action of debt or information in any of the Superior Courts of this colony; and in default of payment of the amount which the offender is condemned to pay, not being damages aforesaid, in a civil or *qui tam* action within the period fixed by the Court, the offender shall be imprisoned for any term less than two years unless such fine and costs be sooner paid.

**121**. It shall be sufficient for the plaintiff in any action or suit given by this chapter to state in the declaration that the defendant is indebted to him in the sum of money thereby demanded, and to allege the particular offence for which the action or suit is brought, and that the defendant hath acted contrary to this chapter without mentioning the writ of election or the return thereof.

**122**. In any such civil action, suit or proceeding, as last aforesaid, the parties to the same, and the husbands or wives of such parties, respectively, shall be competent and compellable to give evidence to the same extent and subject to the same exceptions as in other civil suits; but such evidence shall not thereafter be used in any indictment or criminal proceeding under this chapter against the party or person giving it.

**123** In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers and marking instruments at an election, the property in such papers, boxes and instruments may be stated to be in the Returning Officer at such election.

**124**. It shall be lawful for any of the Superior Courts before which any criminal prosecution is instituted for any offence against the provisions of this chapter, to order payment by the defendant to the prosecutor of such costs and expenses as appear to the Court to have been reasonably incurred in and about the conduct of such prosecution; but the Court shall not make such order unless the prosecutor, before or upon the finding of the indictment, or the granting of the information, enters into a recognizance, with two sufficient sureties in the sum of five hundred dollars, and to the satisfaction of the Court, to conduct the prosecution with effect and to pay the defendant his costs in case he be acquitted.

**125**. In case of an indictment or information by a private prosecutor for any offence against the provisions of this chapter, if judgment be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information; such costs shall be taxed by the proper officer of the Court in which the judgment is given.

**126.** It shall not be necessary on the trial of any suit or prosecution under this chapter, to produce the writ of election or the return thereof, or the authority of the Returning Officer founded upon any such writ of election, but general evidence of such facts shall be sufficient *prima facie* evidence.

**127.** Every prosecution for a misdemeanor under this chapter, and every action, suit, or proceeding for any pecuniary penalty given by this chapter to the person suing for the same, shall be commenced within the space of one year next after the act committed and not afterwards, unless the same be prevented by the withdrawal or absconding of the defendant out of the jurisdiction of the Court, and, being commenced, shall be proceeded with and carried on without delay.

**128.** The Colonial Secretary may deliver certified copies of any writ, list of voters, returns, reports, and other documents, except counterfoils, in his possession, relating to any election; and such copies, so certified, shall be received and be held as *prima facie* evidence before any court or judge in this colony on the trial of any controverted election or any prosecution or suit under this chapter.

**129.** Any person before whom it is hereby required, or intimated by any form in the schedules to this chapter, that any oath be taken or any affirmation made in the manner herein provided, shall have power to administer the same, and shall do so gratuitously, and the Returning Officer at any election shall have the power to administer any oath or affirmation required with respect to such election by this chapter; and the Deputy Returning Officer may administer such oath or affirmation, except only such as may be required to be administered to the Returning Officer.

**130.** Every person taking an oath or affirmation under this chapter, who wilfully swears or affirms falsely, shall be deemed guilty of perjury.

**131.** For the better carrying out of any election of members of the House of Assembly, the Governor shall be authorized to prescribe or give, by Proclamation, any orders or directions not inconsistent with the provisions of this chapter.

**132.** No election shall be declared invalid by reason of a non-compliance with the rules contained in this chapter as to the taking of the poll or the counting of the votes, or by reason of any want of qualification in the person signing a nomination paper received by the Returning Officer under the provisions of this chapter, or of any mistake in the use of the forms contained in the schedules to this chapter, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this chapter, and that such non-compliance or mistake did not affect the result of the election.

**133**. One copy of this chapter and of such instructions, approved by the Governor in Council, as may be required to carry out the elections according to the provisions of this chapter, (with a copious alphabetical index prefixed), for the Returning Officer, and one for each of his deputies, shall be transmitted with the writ of election to each returning officer.

## PART IV.

### CORRUPT AND ILLEGAL PRACTICES.

**134**. No candidate shall, at any election, nor shall any other person acting on his behalf, either provide or furnish drink or other refreshment to any elector during such election, from nomination day to polling day, both inclusive, or pay for, procure, or engage to pay for any such drink or other refreshment, except as hereinafter provided.

**135**. No candidate or any other person shall furnish or supply any ensign, standard, or set of colours, or any other flag, to or for any person whomsoever, with intent that the same should be carried out or used in any district on the day of election, or within eight days before such day, or during the continuance of such election or the polling, by such person, or any other, as a party flag, to distinguish the bearer thereof and those who follow the same, as the supporters of such candidate, or of the political or other opinions entertained, or supposed to be entertained, by such candidate; nor shall any person, for any reason, carry or use any such ensign, standard, or set of colours, or other flag, as a party flag within such district on the day of any such election or polling, or within eight days before such day or during the continuance of such election.

**136**. No candidate, or any other person, shall furnish or supply any ribbon, label, or like favor, to or for any person whomsoever, with intent that the same should be worn or used within such district on the day of such election or polling, or within eight days before such day, or during the continuance of such election, by such person or any other, as a party badge, to distinguish the wearer as the supporter of such candidate, or of the political or other opinions entertained, or supposed to be entertained, by such candidate; nor shall any person use or wear any ribbon, label, or other favor, as such badge, either on his person or affixed to any horse or vehicle, boat or vessel, within such district on the day of any such election or polling, or within eight days before such day or during the continuance of such election.

**137**. Every person offending against any of the provisions of the three next preceding sections shall be punishable by fine not exceeding one hundred dollars, or imprisonment not exceeding three months, or by both, in the discretion of the Court.

**138**. No spirituous or fermented liquors, or strong drink, shall be sold or given at any hotel, licensed house, or shop, or any other place

whatsoever, within the limits of any polling district during the whole of the polling day at any election, under a penalty of two hundred dollars for every offence; and the offender shall be subject to imprisonment not exceeding six months, at the discretion of the Judge or Court, in default of payment of such fine.

**139.** Every candidate who corruptly, by himself, or by or with any person, or by any other ways or means on his behalf, or with his knowledge and consent, at any time either before or during any election, directly or indirectly gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expense incurred for any meat, drink, refreshment or provisions to or for any person in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any person to give or refrain from giving his vote at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of two hundred dollars to any person who shall sue for the same, with full costs of suit, or shall suffer imprisonment for a term not exceeding three months, in addition to any other penalty to which he may be liable therefor under any other provisions of this chapter, and the giving or causing to be given to any voter on the nomination day or day of polling, on account of such voter having voted, or being about to vote, any meat, drink, or refreshment, or any money or ticket to enable such voter to procure refreshment, shall be deemed an unlawful act, and the person so offending shall, on summary conviction thereof before any stipendiary magistrate, forfeit the sum of ten dollars, and, in default of payment, shall be imprisoned for a period not exceeding ten days.

**140.** And whereas doubts may arise as to whether the hiring of teams and vehicles to convey voters to and from the polls, and the paying of railway fares and other expenses of voters, be or be not according to law, it is declared and enacted that the hiring, or promising to pay, or paying for any horse, team, carriage, cab, or other vehicle, by any candidate, or by any person on his behalf, to convey any voter or voters to or from the poll, or to or from the neighbourhood thereof, at any election, or the payment by any candidate, or by any person on his behalf, of the travelling and other expenses of any voter in going to or returning from any election, are or shall be unlawful acts, and the person so offending shall forfeit the sum of one hundred dollars to any person who shall sue for the same, and any voter hiring any horse, cab, cart, waggon, sleigh, carriage, or other conveyance, for any candidate, or for any agent of a candidate, for the purpose of conveying any voter or voters to or from the polling place or places, shall *ipso facto* be disqualified from voting at such election, and for every such offence shall forfeit the sum of one hundred dollars to any person sueing for the same: Provided, that where the nature of a district is such that any electors residing therein are unable at an election for such district to reach their polling station without crossing the sea, or a branch or arm thereof, this chapter shall not prevent the

provision of means for conveying such electors within the district by sea to and from their polling station, and the amount of payment for such means of conveyance may be in addition to the amount of personal expenses of a candidate under this chapter: And, provided also, that if it be necessary for such elector to be conveyed by sea, as aforesaid, such electors may, notwithstanding any provisions of this chapter, be provided with a reasonable amount of food and other refreshments, (except spirituous or fermented liquors, or other strong drink), and the expenses of such conveyance by sea and of such food and refreshment shall be in addition to the amount of personal expenses of a candidate.

**141**. Any person who shall at any election apply for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, shall be deemed to be guilty of personation. The offence of personation or of aiding, abetting, counselling or procuring the commission of the offence of personation by any person, shall be a misdemeanor, and any person convicted thereof shall be punished by a fine not exceeding four hundred dollars, or imprisonment for a term not exceeding twelve months. It shall be the duty of the Returning Officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling or procuring the commission of the offence of personation by any person at the election for which he is Returning Officer; and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the Court in the same manner in which courts are empowered to allow the same in cases of misdemeanor.

**142**. Every candidate who corruptly, by himself, or by or with any other person on his behalf, compels or induces, or endeavours to induce, any person to personate any voter shall, in addition to any other punishment to which he may be liable for such offence, be liable to forfeit the sum of two hundred dollars to any person suing for the same, or shall suffer imprisonment, as aforesaid, for a term not exceeding three months.

**143**. The following persons shall be deemed guilty of bribery and shall be punishable accordingly:—

(1.) Every person who shall directly or indirectly, by himself, or by any other person on his behalf, give or lend, or agree to give or lend, or shall offer, promise, or promise to procure, or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election.

(2.) Every person who shall directly or indirectly, by himself, or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or to endeavour to procure, any office, place, or employment, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election.

(3.) Every person who shall directly or indirectly, by himself, or any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement, as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in the House of Assembly, or the vote of any voter at any election.

(4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure, the return of any person to serve in the House of Assembly, or the vote of any voter at any election.

(5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person, with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay, or cause to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.

And any person so offending shall be liable to forfeit the sum of four hundred dollars to any person who shall sue for the same, together with full costs of suit: Provided always, that the foregoing enactment shall not extend, or be construed to extend, to any money paid, or agreed to be paid, for or on account of any legal expenses *bona fide* incurred at or concerning any election.

**144**. The following persons shall also be deemed guilty of bribery and shall be punishable accordingly:—

(1.) Every voter who shall, before or during any election, directly or indirectly, by himself, or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment for himself, or for any other person, for voting, or agreeing to vote, or for refraining, or agreeing to refrain, from voting at any election.

(2) Every person who shall, after an election, directly or indirectly, by himself, or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

And any person so offending shall, on summary conviction before any stipendiary Magistrate, be subject to a fine of forty dollars, and, in default of payment, shall be imprisoned for a period not exceeding one month

**145**. Every person who shall directly or indirectly, by himself, or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict, or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss, upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or refrain from giving his vote at any election, shall be guilty of undue influence, and shall be liable to forfeit the sum of two hundred dollars to any person who shall sue for the same, together with costs of suit.

**146**. The offences of bribery, treating or undue influence, or any of such offences as defined by this chapter, or any other Act of the Legislature of this Colony, personation or the inducing any person to commit personation, or any wilful offence against any one of the eight next preceding sections of this chapter, shall be corrupt practices within the meaning of the provisions of this chapter.

**147**. No person shall be excused from answering any question put to him in any action, suit or other proceeding in any court, or before any judge, commissioner, or other tribunal, touching or concerning any election, or the conduct of any person thereat or in relation thereto, on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person, as an offender under this chapter.

**148**. Every executory contract or promise or undertaking between a candidate or his agent, and an elector for the district, or in which the elector is beneficially interested in any way referring to, arising out of, or depending upon any election under this chapter, even for the payment of lawful expenses, or the doing of some lawful act shall be void in law; but this provision shall not enable any person to recover back any money paid for lawful expenses connected with such election.

**149**. All persons who have any bills, charges or claims upon any candidate for or in respect of any election, shall send in such bills, charges

or claims within two months after the day of the declaration of the election to the candidate or his agent or agents; otherwise such persons shall be barred of their right to recover such claims, and every or any part thereof: Provided always, that in the event of the death, within the said month, of any person claiming the amount of any such bill, charge or claim, the legal representative of such person shall send in such bill charge or claim within one month of his obtaining probate or letters of administration, or of his becoming otherwise able to act as such legal representative, otherwise the right to recover such claim shall be barred as aforesaid; and provided also, that such bills, charges and claims shall, and may be sent in and delivered to the candidate, or his agent or agents, if, and so long as during the said two months there shall, owing to death or legal incapacity, be no such agent; and provided also, that the agent shall not pay any such bill, charge or claim, without the authority of the candidate, as well as the approval of the agent.

**150.** A detailed statement, verified by affidavit, of all election expenses incurred by or on behalf of any candidate, including such expected payments as aforesaid, shall within three months after the election, (or in any case where by reason of the death of the creditor no bill has been sent in within such period of three months, then within one month after such bill has been sent in), be made out and signed by the candidates, or if there be more than one, by every candidate who has paid the same, and delivered, with the bills and vouchers relative thereto, to the Colonial Secretary; and any candidate who makes default in delivering to the Colonial Secretary the statements required by this section shall incur a penalty not exceeding ten dollars for every day during which he so makes default, and any candidate who wilfully furnishes to the Colonial Secretary any untrue statement shall be guilty of an offence against this chapter; and the said Colonial Secretary shall preserve all such bills and vouchers, and during the six months next after they shall have been delivered to him shall permit any voter to inspect the same on payment of a fee of twenty cents.

**151.** No returning officer or deputy returning officer for any polling district, nor any partner or clerk of either of them, shall act as agent for any candidate in the management or conduct of his election for such district, and if any returning officer or deputy returning officer, or the partner or clerk of either of them, so acts, he shall be liable to a penalty not exceeding one hundred dollars, to be recovered in a summary manner before a stipendiary magistrate.

**152.** The words "personal expenses" as used in this chapter, with respect to the expenditure of any candidate in relation to the election at which he is a candidate, shall include the reasonable travelling expenses of his living at hotels or elsewhere, for the purpose of and in relation to such election.

**153.** The pecuniary penalties hereby imposed for any offences under this chapter shall, unless otherwise provided, be recoverable by action

or suit by any person who shall sue for the same, together with costs of suit.

**154**. In case of any indictment or information by any private prosecutor for any offence against the provisions of this chapter, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs, to be taxed by the Court, sustained by the defendant by reason of such indictment or information, which costs shall be taxed by the Court.

**155**. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of six months next after such offence shall have been committed.

**156**. In any action for the recovery of a penalty, or forfeiture, under this chapter, it shall suffice for the plaintiff to declare that the defendant is indebted to him in the amount of the penalty or forfeiture, and to allege the particular offence for which the action is brought, and that the defendant hath acted therein contrary to this chapter, without mentioning the writ for the holding of the election or the return thereof.

## PART V.

### TRIAL OF CONTROVERTED ELECTIONS.

**157**. A petition complaining of an undue return, or undue election of a member, or of no return, or double return, or of any unlawful act committed by any candidate not returned, by which such candidate aforesaid is alleged to have become disqualified to sit in the House of Assembly, may be presented to the Supreme Court by any one or more of the following persons:—

(1.) Some person who voted, or who had a right to vote at the election to which the petition relates; or

(2.) Some person claiming to have a right to be returned or elected at such election; or

(3.) Some person alleging himself to have been a candidate at such election.

**158**. The following enactments are made with respect to the presentation of an election petition under this chapter:—

(1.) The petition need not be in any particular form, but it must complain of the undue election or return of a member, or that no return has been made, or that a double return has been made, or of matter contained in any special return made, or of

some such unlawful act, as aforesaid, by any candidate not returned, and it must be signed by the petitioner, or all the petitioners, if there are more than one.

(2.) The petition shall be presented within two months after the return has been made to the Colonial Secretary of the member to whose election the petition relates, unless it questions the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within two months after the date of such payment.

(3.) At the time of the presentation of the petition security for the payment of all costs, charges and expenses that may become payable by the petitioner shall be given by him, or on his behalf, and shall be by two approved sureties, or by a deposit of money with the Clerk of the Court to the amount of four hundred dollars; the Clerk of the Court shall give a receipt for such deposit, which shall be evidence of the sufficiency thereof.

**159.** Notice of the presentation of a petition under this chapter, and of the security, accompanied with a copy of the petition, shall, if the respondents be resident within the central district, within five days, and in other cases within ten days, or such further time as the Court shall allow from the filing of the petition, be served on the respondent or respondents: Provided that substituted service may be made by leave of the Court, as prescribed by section 6, of chapter 20, of the Consolidated Statutes, (first series), title IV., entitled 'Of Pleading and Practice.'

**160.** Within five days after service of the petition and notice, the respondent may file in the office of the Clerk of the Court any preliminary objection or grounds of insufficiency which he may have to urge against the petition or petitioner, or against any further proceeding thereon, and shall in such case at the same time serve a copy thereof upon the petitioner. If service be made without the central district, the respondent may present, by filing as aforesaid, such objections and grounds within ten days, or such further time as may be allowed by the Court. The Court shall hear the parties on such objections and grounds and shall decide the same in a summary manner.

**161.** Within five days after the decision upon the preliminary objections, if presented as aforesaid, and upon the hearing thereof, if disallowed, or on the expiration of the time for presenting the same, if none be presented, the respondent may file a written answer to the petition and serve a copy thereof upon the petitioner; but whether such answer be or be

not filed the petition shall be held to be at issue after the expiration of the time for filing the same, and the Court may at any time thereafter, upon the application of either party, fix some convenient time for the trial of the petition.

**162.** The Clerk of the Court shall keep a docket of all petitions presented under this chapter, and at issue, placing them in the order in which they were presented, which shall be open to inspection by any person making application, and such petitions shall be tried in the order in which they stand on the list.

**163.** Every election petition shall be tried without a jury by one of the Judges of the Supreme Court, in rotation, unless from illness, or the condition of judicial business, such a course may be impracticable: Provided that if the Judge before whom proceedings were commenced cannot continue the trial thereof, the same may be continued under another judge, who may use the evidence and proceedings previously had, or rehear and review the same at his discretion.

**164.** Every election petition shall be tried at St. John's: Provided that the Court may, for sufficient cause, transfer the same to any place where the Supreme Court on Circuit shall sit, in the same manner and subject to such terms, in the discretion of the Court, as actions at law may now or hereafter be transferred.

**165.** Notice of the time and place at which election petitions will be tried shall be given not less than ten days before that on which the trial is to take place.

**166.** The Judge, at the trial, may adjourn the same from time to time, as to him may seem necessary to the ends of justice.

**167.** At the conclusion of the trial the Judge shall determine whether the member whose election or return is complained of, or any, or what other person was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the Governor, appending thereto a copy of the notes of the evidence, and the determination thus certified shall be final to all intents and purposes.

**168** When any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the Judge shall, in addition to such certificate and at the same time report in writing to the Governor, as follows:—

(1.) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge or consent of any candidate at such election, and the nature of such corrupt practice,

(2.) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice.

(3.) Whether any corrupt practices have, or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.

**169.** When it is found by the report of the Judge upon an election petition under this chapter that bribery, treating or undue influence has been committed by or with the knowledge or consent of any candidate at the election complained of, such candidate shall be deemed to be personally guilty of bribery, treating, or undue influence, as the case may be, at such election, and his election, if he has been elected, shall be void, and he shall be incapable of again being a candidate for election during the existence of that Assembly to which he claimed to have been elected.

**170.** When, upon the application of any party to an election petition duly made to the Judge, it appears to such judge that the case raised by the petition can be conveniently stated as a special case, such judge may direct the same to be so stated, and any such special case shall be heard before such judge, who shall thereupon give such judgment as to justice may appertain, and in case the decision be final, the Judge shall certify to the Governor his decision on such special case in the manner and time specified in section 167 of this chapter.

**171.** Where, upon the application of any party to a petition, it appears to the Judge that any question of law as to the admissibility of evidence or otherwise requires further consideration by the Supreme Court, such judge may reserve such question for the opinion of the Supreme Court, which, for the purposes of this chapter, shall be two or more judges, either in term or vacation, and may postpone the granting of a certificate until the determination of such question.

**172.** Unless the Judge otherwise directs, any charge of a corrupt practice may be gone into and evidence in relation thereto received before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.

**173.** The Governor shall, at the earliest practicable moment after he receives the certificate and report (if any) of the Court or Judge, give the necessary directions and adopt all the proceedings necessary for confirming or altering the return, or for the issuing of a new writ for a new election, or for otherwise carrying the determination into effect.

**174.** Two or more candidates may be made respondents to the same petition, and their cases may, for the sake of convenience, be tried at the same time; but, for the purposes of this chapter, such petition shall be deemed a separate petition against each respondent.

**175.** When more petitions than one are presented relating to the same election or return, all such petitions may be dealt with by the Court, on the application of the respondent, in the same manner as actions at *nisi prius* may now or hereafter be consolidated, according to the practice of the Supreme Court.

**176.** The Judges of the Supreme Court may, from time to time, make, revoke, alter, and amend general rules and regulations for the effectual execution of this chapter, and the regulation of the practice and procedure under this chapter, which rules and regulations shall, while in force, be deemed to be part of and incorporated with this chapter.

**177.** In matters not by this chapter, or by the rules and regulations under section 176 of this chapter, provided for, the principles, pactice and rules respecting the trial of controverted elections in England shall apply and be deemed to be incorporated in the enactments herein made so far as the same shall be deemed to be applicable.

**178.** An election petition may be withdrawn by leave of the Court on application of the petitioners, subject to such terms as the Court may direct, or may, upon the application of the respondent and by leave of the Court, be dismissed after two months from the filing thereof for want of prosecution, in like manner as bills in equity may be dismissed for the same cause and subject to the like terms.

**179.** When there are more petitioners than one no application to withdraw a petition shall be made, except with the consent of all the petitioners.

**180.** If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent, unless the Court otherwise order.

**181.** An election petition shall be abated in the following cases :—

(1.) The death, at any time before judgment, of a sole petitioner, either candidate or otherwise.

(2.) The death of a respondent.

(3.) If a second respondent gives notice to the Court, supported by affidavit, of his intention to withdraw his opposition to the pending petition, and then upon terms to be imposed by the Court.

**182.** All costs, charges and expenses paid or incurred by any party to an election petition shall be taxed and allowed by the Chief Clerk of the Supreme Court according to the scale of costs in equity, and may be recovered by execution or upon a rule of court for the payment of the sum taxed, as upon an ordinary rule for the payment of money.

**183**. In addition to the fees payable under the scale of costs in equity, the Master or Clerk shall be entitled to receive the following fees:—

Taxing recognizance... ... ... ... $2.50
Taxing costs ... ... ... ... ... $1.50 to $5.00,
according to the length and importance of the case.

**184**. The Court shall have all and the same powers as to summoning and compelling the attendance of witnesses and process and punishment for contempt as the Supreme Court. The general law of evidence and pleading shall in all particulars govern the proceedings and trial upon an election petition.

**185**. A judge trying an election petition under this chapter shall be deemed to be a judge sitting as the Supreme Court, and the Court shall be a court of record.

**186**. Upon the trial of an election petition the presiding judge shall be paid the sum of one hundred dollars out of the funds of the colony.

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## SCHEDULES.

### A.

SECTION 9.

*List of Electors.*

District of )
)

The list of persons entitled to vote in the election of a member (or members) for the district of .

| No. | Christian Name and Surname of each Elector. | Place of abode. | Qualification. |
|---|---|---|---|
| 1 | Adams, John | Prescott Street, St. John's. | 21 years and upwards. |

### B.

SECTION 11.

*Notice to be attached to or published with the List of Electors.*

I hereby give notice that the Justice of the Peace for this district will, on or before the day of , in this year, make out a list

of all persons entitled to vote in the election of a member (or members) to represent the district of in the House of Assembly. And every person so entitled, and whose name is not included in the above list, is hereby required to deliver or transmit to me, on or before the day of , in this year, a claim, in writing, containing his christian name and surname, and name of the place where he resided, his age, place of birth and the name of his father.

A. B.

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## C.

SECTION 11.

*Notice of Claim to be given to the Magistrate or person making the List.*

I hereby give you notice that I claim to be inserted in the list of electors for the district of , and that the particulars of my qualification are stated below.

Dated at , the day of , &c.

To Mr. E. F., or G. H., Esq.

C. D.

(*Here state particulars of qualification.*)

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## D.

SECTION 18.

*Notice to be given to the Voter objected to by the party objecting.*

I hereby give notice that I object to your right of being registered as an elector for the district of .

Dated at , the day of , &c.

J. K.

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## E.

SECTION 14.

*List of Electors.*

District of }
}

The list of persons entitled to vote in the election of a member (or members) for the district of .

| No. | Christian Name and Surname of each Elector. | Place of abode. | Qualification. |
|---|---|---|---|
| 1 | Ayre, Andrew | Prescott Street, St. John's. | 21 years and upwards. |

## F.

SECTION 32.

*Election Writ.*

*VICTORIA, by the Grace of GOD, of the United Kingdom* [*L. S.*] *of Great Britain and Ireland, Queen, Defender of the Faith.*

To , Esquire, greeting:

Whereas by Our Proclamation, bearing date the day of , in the year of Our reign, We have made known to all Our loving subjects within Our Island of Newfoundland Our intention to issue Our writs for a general election of members to serve in the General Assembly of Our said Island, (omit these words except in case of a general election).

We command you that, notice of the time and place of election being duly given, you do cause election to be made according to law of a member (or as the case may be) to serve in the House of Assembly of Newfoundland, for the electoral district of , (except in the case of a general election, insert here "in the place of , deceased," or otherwise stating the cause of vacancy), and that you do cause the nomination of candidates at such election to be held on the day of ; and in case more candidates be nominated than the number required to be elected, that you do hold a poll on the day of , and that you do cause the name (or names) of such candidate (or candidates) when so elected, whether he (or they) be present or absent, to be certified to Our Colonial Secretary as by law directed.

Witness Our trusty and well-beloved , Governor and Commander-in-inChief in and over Our said Island and its dependencies, at St. John's, in Our said Island, the day of , A. D. , in the year of Our reign.

A. B, Colonial Secretary.

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INDORSEMENT.

Received the within writ on the day of , 18 .

A. B., Returning Officer.

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## G.

SECTION 37.

*Oath of the Returning Officer.*

I, the undersigned A B., Returning Officer for the electoral district of , solemnly swear (or if he be one of of the persons permitted by law to affirm in civil cases, solemnly affirm), that I am legally qualified

according to law to act as returning officer for the said electoral district of , and that I will act faithfully in that capacity, without partiality, fear, favor or affection. So help me God

A. B, Returning Officer.

*Certificate of Returning Officer having taken Oath of Office.*

I, the undersigned, hereby certify that on the day of the month of , 18 , A. B., the Returning Officer for the electoral District of , took and subscribed before me the oath (or affirmation) of office in such case required of a returning officer by section 37 of "Election Act, 1889."

C. D., Justice of the Peace.

## H.

SECTION 38.

*Commission of an Election Clerk.*

To E. F., (set forth his legal addition and residence).

Know you, that in my capacity of Returning Officer for the electoral district of , I have appointed and do hereby appoint you to be my election clerk. to act in that capacity according to law, at the approaching election for the said electoral district of , which election will be opened by me on the day of the month of , 18 .

Given under my hand, this day of , in the year 18 .

A. B., Returning Officer.

## I.

SECTION 38.

*Oath of the Election Clerk*

I, the undersigned E F., appointed Election Clerk for the electoral district of , solemnly swear (or if he be one of the persons permitted by law to affirm in civil cases, solemnly affirm) that I will act faithfully in my said capacity as election clerk, and also in that of returning officer, if required to act as such, according to law, without partiality, fear, favor or affection. So help me God.

E. F., Election Clerk.

*Certificate of the Election Clerk having taken the Oath of Office.*

I, the undersigned, hereby certify that on the day of , 18 , E. F., election clerk for the electoral district of , took and

subscribed before me the oath (or affirmation) of office required in such case of an election clerk by section 38 of the "Election Act, 1889."

In testimony whereof, I have delivered to him this certificate under my hand.

C. D., Justice of the Peace.
Or, A. B., Returning Officer.

## J.

SECTION 41.

*Notice by Returning Officer.*

NOTICE.

Electoral District of , to wit.

Public notice is hereby given to the electors of the electoral district aforesaid that in obedience to Her Majesty's Writ to me directed, and bearing date the day of , 18 , I require the presence of the said electors at (describe place) in the district of , on the day of the month of , from ten a.m., until two of the clock in the afternoon, for the purpose of nominating a person (or persons, as the case may be) to represent them in the General Assembly of Newfoundland; and that in case a poll be demanded and allowed in the manner by law prescribed, such poll will be opened on the day of the month of , in the year 18 , from the hour of eight in the morning till four of the clock in the afternoon, in each of the polling districts fixed by the Proclamation of His Excellency the Governor, dated the day of the month of , in the year 18 .

And further, that at (name the place), I shall open the ballot boxes, count the votes given for the several candidates, and return as elected the one (or as the case may be) having the majority of votes; of which all persons are hereby required to take notice and to govern themselves accordingly.

Given under my hand, at , this day of , in the year 18 .

A. B., Returning Officer.

## K.

SECTION 44.

*Nomination Paper, &c.*

We, the undersigned electors of the electoral district of , hereby nominate (name, residence and addition or description of person nominated, and if the candidate be absent from the place of nomination,

add "who is absent from the place of nomination") as a candidate at the election now about to be held of a member to represent the said electoral district in the House of Assembly of Newfoundland.

Witness our hands, at , in the said electoral district, this day of , 18 .

Signed by the said electors, in the presence of , of , (additions).

Signatures, with residence and additions.

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SECTION 45.

*Consent to Nomination if Candidate be present.*

I, the said , nominated in the foregoing nomination paper, hereby consent to such nomination.

Witness my hand, at , this day of , 18 .

Signed by the said nominee, in presence of , of , (additions).

(Signature).

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## L.

SECTION 46.

*Oath of the Attestation of the Nomination Paper.*

I, A. B., of , (additions), solemnly swear (or if he be one of the persons permitted by law to affirm in civil cases, solemnly affirm) that I know (mentioning the names of the signers known to him), and that they are duly qualified as electors of the electoral district of to vote at an election of a member to serve in the House of Assembly of Newfoundland, and that they respectively signed the foregoing (or within) nomination paper in my presence; and further (if the case be so) that the said thereby nominated as a candidate, signed his consent to the nomination in my presence, (or is absent from the place of nomination and has consented to his nomination, as the case may be).

A. B.

Sworn (or affirmed) before me, at , this day of , 18 .

C. D.,
Justice of the Peace,
(or Returning Officer).

The forms in this schedule may be varied according to circumstances, the intention of the 46th section of this chapter being complied with; and the assent of the candidate may be sworn to by a separate elector, if the facts require it to be so.

**M. 1.**

*Qualification in Income of Candidate Present.*

SECTION 48. SUB-SECTION (*a*).

I, A. B., of , (name and addition of the candidate) do swear (or affirm) that I have resided in the island of Newfoundland for the period of two years next preceding the day of this election of a member (or members) of the House of Assembly for the district of (naming the district). That I truly and *bona fide* am possessed of a net annual income of four hundred and eighty dollars, and am otherwise qualified according to the law of this island to serve in the House of Assembly of Newfoundland, and that my said income arises from and consists of (here specify the source from which the income is derived).

A. B.

Sworn (or affirmed) before me,
at , &c.

C. D.,
Returning Officer.

---

**M. 2.**

*Qualification in Property of Candidate Present.*

SECTION 48. SUB-SECTION (*a.*)

I, A. B,, of , (name and addition of the candidate) do swear (or affirm) that I have resided in the Island of Newfoundland for the period of two years next preceding the day of this election of a member (or members) of the House of Assembly for the district of (naming the district), and that I truly and *bona fide* am possessed of property, clear of all incumbrances, of two thousand four hundred dollars, in amount or value, and that I am otherwise qualified according to the law of this Island, to serve in the House of Assembly of this Island ; and that my said property consists of (here specify the character and description of the property and where situate).

A. B.

Sworn (or affirmed) before me, at

C. D.,
Returning Officer.

---

**M. 3.**

SECTION 48. SUB-SECTION (*b*).

*Qualification in Income of Candidate Absent.*

We, A. B and C. D., of , (names and additions of electors) do swear (or affirm) that (name of candidate) is truly and *bona fide* possessed

of a net annual income of four hundred and eighty dollars, and is otherwise qualified, according to the law of this island, to serve in the House of Assembly of Newfoundland; and that his said income consists of (here state the source from which the income is derived).

A. B., C. D.

Sworn (or affirmed) before me, at .

C. D.,
Stipendiary Magistrate.

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## M. 4.

SECTION 48. SUB-SECTION (*b.*)

*Qualification in Property of Candidate Absent.*

We, A. B. and C. D., of , (names and additions of electors) do swear (or affirm) that (name of candidate) is truly and *bona fide* possessed of property clear of all incumbrances of two thousand four hundred dollars in amount or value, and is otherwise qualified, according to the law of this Island, to serve in the House of Assembly of Newfoundland, and that his said property consists of (here state the source from which the property is derived).

A. B., C. D.

Sworn (or affirmed) before me, at .

C. D.,
Stipendiary Magistrate, (or Justice of the Peace, as the case may be).

---

The forms in schedule M. 3 and M. 4 may be varied when the candidate is absent, so that the qualification may be sworn to (or affirmed) by the candidate, as provided in section 48, sub-section (*b.*) of this chapter.

## N.

SECTION 49

*Return to Writ when Election not contested.*

I hereby certify that the member (or members) elected for the electoral district of , in pursuance of the within writ is (or are) A. B., of , no other candidate having been nominated, (or the other candidate or candidates having withdrawn, as the case may be).

E. F., Returning Officer.

## O.

SECTION 51.

*Notice of Poll and Candidates.*

Electoral district of , to wit.

Public notice is hereby given to the electors of the electoral district aforesaid, that a poll has been demanded at the election now pending for the same, and that I have granted such poll: And that the persons duly nominated as candidates at the said election, and for whom only votes will be received, are—

(Here insert the names and descriptions of the candidates, alphabetically arranged, in the same manner as they appear in the ballot papers viz.):—

1. DOE.
John Doe, of St. John's,
Gentleman.

2. ROE.
Richard Roe, of Carbonear,
Merchant.

3. STILES.
Geoffrey Stiles, of Fogo,
Fisherman.

4. STYLES.
John Styles, of Twillingate,
Physician.

Of which all persons are hereby required to take notice and to govern themselves accordingly.

Given under my hand at , the day of , 18 .

A. B., Returning Officer.

(Printed directions to the voters in the following form must be appended to this notice, and must in all cases be posted up with it):—

DIRECTIONS FOR THE GUIDANCE OF ELECTORS IN VOTING.

Each elector, on entering the room where the poll is to be held, shall declare his name, surname and addition.

After so doing he shall receive a ballot paper in the above form.

Each elector, if required by the Deputy Returning Officer, the Poll Clerk, one of the candidates, or one of their agents, shall, before receiving his ballot paper, take an oath of qualification.

The voter is to vote only for (here insert number of candidates).

After receiving his ballot paper the voter shall go into one of the compartments, and, with a pencil there provided, place a cross in the division containg the name or names of the candidate or candidates for whom he intends to vote, thus X.

The voter will then fold the ballot paper, so as to show a portion of the back only, with the initials of the Deputy Returning Officer, and shall hand it so folded up to the Deputy Returning Officer, and the Deputy Returning Officer shall, without unfolding it, ascertain that it is the ballot paper which he furnished to the elector, and then immediately place it in the ballot box.

If a voter inadvertently spoils a ballot paper he may return it to the Deputy Returning Officer, who will give him another.

If the voter votes for more candidates than he is entitled to vote for, or places any mark on the ballot paper by which he can afterwards be identified, his vote will be void and will not be counted.

If a voter takes a ballot or ballot paper out of the polling station, or fraudulently puts any other paper into the ballot box than the paper given him by the Deputy Returning Officer, he will be subject to be punished by fine of five hundred dollars, or by imprisonment for a time not exceeding six months, with or without hard labor.

## P.

SECTION 52.

*Oath of Candidate withdrawing from Nomination.*

I, A. B, of , duly nominated as a candidate for election as a member of the House of Assembly, hereby withdraw the said nomination, and do solemnly swear (or affirm) that I do so freely and voluntarily, and that I have not received, directly or indirectly, from any person or body, any gift, loan, offer, promise, or any promise to procure, or endeavor to procure, any money, office, place or appointment, or other consideration for such withdrawal.

A. B., Candidate.

Sworn (or affirmed) before me, at ,
this day of , 18 .

C. D.,
Returning Officer (or Justice of the Peace).

## Q.

SECTION 53.

*Commission of a Deputy Returning Officer.*

To G. H., of , (insert his legal addition and residence).

Know you, that in my capacity as Returning Officer for the electoral district of , I have appointed, and do hereby appoint, you to be Deputy Returning Officer for the polling station, number , at , in the said electoral district of , there to take the votes of the electors by ballot according to law, at the polling station to be by you opened and kept for that purpose; and you are hereby authorized and required to open and hold the poll of such election for the said polling station, on the day of at eight o'clock in the forenoon, at (here describe particularly the place in which the poll is to be held), and there to keep the said poll open during the hours prescribed by law, and to take at the said polling place, by ballot, in the manner by law provided, the votes of the electors voting at the said polling place, and, after performing the other duties required of you by law, to return to me forthwith the ballot boxes, sealed with your seal, and unused and spoilt ballot papers, voters' list, and other documents required by law, together with this commission.

Given under my hand at , this day of , in the year 18 .

A. B., Returning Officer.

## R.

SECTION 53.

*Oath of Deputy Returning Officer.*

I, the undersigned G. H., appointed Deputy Returning Officer for the polling station number , at , in the electoral district of , solemnly swear (or being one of the persons permitted by law to affirm in civil cases, solemnly affirm), that I will act faithfully in my said capacity of Deputy Returning Officer, without partiality, fear, favor or affection. So help me God.

G. H., Deputy Returning Officer.

---

*Certificate of a Deputy Returning Officer having taken the Oath of Office.*

I, the undersigned, hereby certify that on the day of the month of , G. H, Deputy Returning Officer for the polling station number , at , in the electoral district of , took and subscribed the oath (or affirmation) of office required in such case of a deputy returning officer by section 53 of the "Election Act, 1889."

In testimony whereof I have delivered to him this certificate under my hand.

E. F., Justice of the Peace,
Or, A. B., Returning Officer.

## S.

SECTION 54.

*Form of Ballot Paper and Directions for Voting.*

Election for the electoral district of .

1. DOE.
John Doe, of St. John's,
Gentleman.

2. ROE.
Richard Roe, of Carbonear,
Merchant.

3. STILES.
Geoffrey Stiles, of Fogo,
Fisherman.

4. STYLES.
John Styles, of Twillingate,
Physician.

## T.

SECTION 56.

*Commission of a Poll Clerk.*

To I. J , of , (insert his legal addition and residence).

Know you, that in my capacity of Deputy Returning Officer for the polling station number , at , in the electoral district of , I have appointed, and do hereby appoint, you to be Poll Clerk for the said polling station.

Given under my hand, at , this day of , in the year 18 .

G. H , Deputy Returning Officer.

## U.

SECTION 56.

*Oath of Poll Clerk.*

I, the undersigned J. P., appointed Poll Clerk for the polling station number , at , in the electoral district of , do solemnly swear (or affirm) that I will act faithfully in my capacity of poll clerk, and also of deputy returning officer, if required to act as such, according to law, without partiality, fear, favor or affection.

J. P., Poll Clerk.

Sworn (or affirmed) before me, at ,
day of , A. D. .

A. B., Returning Officer.
C. D., Deputy Returning Officer.

## V.

SECTION 58.

*Commission of a Poll Clerk by a Poll Clerk acting as Deputy Returning Officer.*

To , of (insert his residence and legal addition).

Know you, that in my capacity of acting Deputy Returning Officer for the polling station number , at , in the electoral district of , in consequence of the decease (or incapacity to act, or as the case may be), of the Deputy Returning Officer for the said polling station, whose Poll Clerk I was, I have appointed, and do hereby appoint, you to be Poll Clerk for the said polling station number , in the said electoral district.

Given under my hand, at , this day of , in the year 18 .

A. B, Deputy Returning Officer.

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*Poll Clerk acting as Deputy Returning Officer.*

The oath and certificate of its having been taken, will be the same as in the case of a poll clerk appointed by the Deputy Returning Officer.

---

## W.

SECTION 59.

*Oath of Candidate's Agent.*

I, A. B., of , do solemnly swear (or affirm) that I have been appointed by , one of the candidates for election for the electoral district of , to act as his agent. A. B.

Sworn (or affirmed) before me, this day of , 18 .

C. D., Returning Officer.

---

## X.

SECTION 64.

*Form of Statutory Declaration of Secrecy.*

I solemnly promise and swear (or affirm) that I will not, at the election for , do anything forbidden by section 65 of the "Election Act, 1889," which has been read to me. So help me God.

A. B.,
Returning Officer (or as the case may be).

Sworn (or affirmed) before me, at ,
this day of , 18 .

C. D.,
Justice of the Peace, (or as the case may be).

## Y.

SECTION 72.

*Oath of Voter's Qualification.*

I, A. B., solemnly swear (or affirm)—

1. That I am the person named or purporting to be named by the name of , (and, if there are more persons than one of the same name in the said list, inserting also his addition or occupation), on the list of voters for polling district No. , in the electoral district of .

2. That I am a British subject by birth (or naturalization, as the case may be), and that I am of the full age of twenty-one years.

3. That I have not voted before at this election, either at this or at any other polling place.

4. That I have not received anything, nor has anything been promised me directly or indirectly. So help me God.

---

## A. A.

SECTION 74,

*Oath of Identity by Elector after another has voted in his name.*

I solemnly swear (or affirm) that I am A. B., of , whose name is entered on the list of electors (or supplementary list, as the case may be), and that I am qualified by law to vote at this election.

A. B.

Sworn (or affirmed) before me, at ,
this day of , 18 .

C. D., Deputy Returning Officer.

---

## B. B.

SECTION 78.

*Oath of Elector of Incapacity to Vote.*

I, A. B., solemnly swear (or affirm) that I am unable to read and to understand the ballot papers so as to mark the same, (or that I am incapacitated by physical causes, as the case may be, from voting) without the assistance of the Deputy Returning Officer.

NOTE.—This oath is to be administered to each elector wishing his ballot paper marked by the Deputy Returning Officer, but no certificate need be signed by the elector.

## C. C.

SECTION 82.

*Form of Voters' List.*

| Number. | Name. | Occupation. | Residence. | Voted or refused to vote. | Sworn or affirmed, or refused to swear or affirm to qualification. | Blind, or refused to swear or affirm to blindness. | Unable to read, or refused to swear or affirm to inability. | Second ballot. | Second voter. | Objections. | Remarks. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |

## D. D.

SECTION 85.

*Oath of the Deputy Returning Officer after the Closing of the Poll.*

I, the undersigned Deputy Returning Officer for the polling station number , at , in the electoral district of , do solemnly swear (or if he be one of the persons permitted by law to affirm in civil cases, do solemnly affirm), that to the best of my knowledge and belief the voters' list kept for the said polling station, under my direction, hath been so kept correctly; and that the total number of votes polled in the said list is , and that to the best of my knowledge and belief it contains a true and exact record of the votes given at the polling station in the said polling district as the said votes were taken thereat; and that the ballot boxes, packets of ballot papers, and other documents, required by law to be returned by me to the Returning Officer, have been faithfully and truly prepared by me, as directed by section 85 of "Election Act, 1889," for delivery to the legally appointed messenger, to the end that they may be transmitted to the Returning Officer according to law.

G. H., Deputy Returning Officer.

Sworn before me, at , this day of , 18 .

X. Y., Justice of the Peace.
Or, A. B., Returning Officer.

## E. E.

SECTION 85.

*Oath of the Poll Clerk after the Closing of the Poll.*

I, the undersigned Poll Clerk for the polling station number , at , in the electoral district of , do solemnly swear that the voters' list in and for the said (as the case may be), under the direction of G. H., who has acted as deputy returning officer therein, has been so kept by me under his direction, as aforesaid, correctly, and to the best of my skill and judgment; that the total number of votes polled in the said list is , and that to the best of my knowledge and belief it contains a true and exact record of the votes given at the said polling station as the said votes were taken at the said poll by the said deputy returning officer.

J. J., Poll Clerk.

Sworn before me, at , this day of , 18 .

X. Y., Justice of the Peace.
A. B., Returning Officer.
Or, G. H., Deputy Returning Officer.

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## F. F.

SECTION 87.

*Appointment of Messenger to collect Ballot Boxes.*

To the Deputy Returning Officer at station number , at , in the electoral district of .

The bearer A. B., has been appointed by me, under the provisions of section 87 of the "Election Act, 1889," to collect the ballot boxes and packets of papers, which you are required by section 85 to deliver after the close of the poll to a messenger appointed by me.

C. O., Returning Officer.

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*Oath to be taken by Messenger before receiving Balllot Boxes and Packets of Papers from any Deputy Returning Officer.*

I, A. B., of , solemnly swear (or affirm) that I am the legally appointed messenger of C. O., returning officer for the electoral district of , for the purpose of collecting ballot boxes and packets of papers from the deputy returning officers.

A. B., Messenger.

Sworn (or affirmed) before me, at , this day of , 18 .

E. F., Deputy Returning Officer.

## G. G.

SECTION 87.

*Oath of Messenger sent to collect the Ballot Boxes, or to deliver them to the Colonial Secretary.*

I, A. B., of , messenger appointed by C. D., returning officer for the electoral district of , do solemnly swear that I will, with all diligence, convey the several ballot boxes and parcels delivered into my possession by the several deputy returning officers, (or by the Returning Officer, as the case may be), to the said Returning Officer, (or to the Colonial Secretary, as the case may be), and that I will not open or tamper with, nor permit any other person to open or tamper with, any of the said ballot boxes and parcels.

Sworn before me, at , this day of , in the year 18 .

X. Y., Justice of the Peace.
Or, A. B., Returning Officer.
Or, G. H., Deputy Returning Officer.

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## H. H.

SECTION 87.

*Oath of Messenger on delivery of Ballot Boxes.*

I, A. B., of , messenger appointed by C. D., Returning Officer for the electoral district of , do solemnly swear that the several ballot boxes and parcels delivered to me by the deputy returning officers, (or returning officer, as the case may be), and now delivered by me to the Returning Officer (or Colonial Secretary, as the case may be), have not been opened or tampered with by me nor by any other person with my knowledge or consent, and that to the best of my knowledge, they are in the same state as they were in when they came into my possession.

A. B., Messenger.

Sworn before me, at , this day of , in the year 18 .

X. Y., Justice of the Peace.
Or, A. B., Returning Officer.
Or, G. H., Deputy Returning Officer.

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## I. I.

SECTION 91.

*Certificate of Deputy Returning Officer and Poll Clerk verifying copy of "Voters' List."*

We, A. B. and C. D, Deputy Returning Officer and Poll Clerk respectively, of polling station No. , at , in the electoral district of , do solemnly swear (or affirm) that the accompanying copy of the voters' list kept at the said polling station, is correct in every particular, and contains a faithful record of the names of electors applying for ballot papers at the said election.

A. B., Returning Officer.
C. D., Poll Clerk.

Sworn (or affirmed) before me, at ,
this day of , A. D., 18 .

E. F.,
Stipendiary Magistrate (or Justice of the Peace or Returning Officer, as the case may be).

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## J. J.

SECTION 99.

*Returning Officer's Statement at conclusion of Counting.*

| | |
|---|---|
| 1.—Number of ballot papers sent to D. R. O. ... ... ... | 500 |
| 2.—Number of ballot papers said to be in ballot boxes ... ... | 350 |
| 3.—Number of ballot papers found in ballot boxes ... ... ... | 345 |
| 4.—Number of unused and spoilt ballot papers said to be returned... | 150 |
| 5.—Number of unused and spoilt ballot papers actually returned ... | 145 |
| 6.—Number of ballot papers accepted when counting ... ... | 320 |
| 7.—Number of ballot papers rejected when counting ... ... | 25 |
| 8.—Votes counted for John Doe ... ... ... ... ... | 250 |
| 9.—Votes counted for Richard Roe ... ... ... ... ... | 150 |
| 10.—Voter counted for Geoffrey Stiles... ... ... ... ... | 205 |
| 11.—Votes counted for John Styles ... ... ... ... ... | 275 |

I, A. B., Returning Officer for the electoral district of , do solemnly swear (or affirm) that the above statement is correct in every particular.

A. B., Returning Officer.

Sworn (or affirmed) before me, at ,
this day of , 18 .

C. D.,
Stipendiary Magistrate (or Justice of the Peace, as the case may be).

NOTE.—The figures in the above statement are given to illustrate what is wanted in the statements. No. 2 and No. 4 added, should amount to No. 1, and if they do not, the discrepancy should be explained, if possible, by a foot note. No. 2 should agree with No. 3, and No. 4 with No. 5; if not, the discrepancy should be explained. Nos. 6 and 7 added, must coincide with 3.

**K. K.**

SECTION 100.

*Return after a Poll is taken.*

I hereby certify that the member (or members) elected for the electoral district of , in pursuance of the writ to me directed, as having received the majority of votes lawfully given, is (or are) . (Here insert the names, placing first the name of the candidate who received the most votes, where more than one have been elected).

A. B., Returning Officer.

Dated at , this day of , A. D. 18 .

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# CHAPTER 4.

## Of Legislative Disabilities and the Vacation of Seats in the House of Assembly.

SECTION
1.—Persons holding office under Government not eligible to be elected members of House of Assembly.
2.—Exceptions.
3.—Vacation of seat by acceptance of office.
4.—Upon vacancy writ for new election to issue.
5.—Members who may be re-elected.
SECTION
6.—Member resigning to pay expenses of new election.
7.—Receipt of sessional pay not to vacate seat.
8.—Seat in Legislative Council to become vacant upon nomination as candidate for House of Assembly.
9.—Penalty for sitting and voting when ineligible or disqualified.

**1.** Except as in section 2 provided no person shall be eligible to be elected, or shall sit or vote as a member of the House of Assembly,

(1.) Who shall hold any office, place or appointment of profit or emolument from or under the Government of this colony, or from or under either branch of the Legislature, or from or under any board or public body, the members whereof are appointed by the Government, or

(2.) Who shall directly or indirectly by himself or by any person in trust for him or for his use or benefit, or on his account undertake, execute or enjoy, in whole or in part, any contract or agreement for or on account of the public service.

**2.** The above section shall not apply or extend to or include or in any way affect the following persons, that is to say:

(1.) The persons who may respectively hold the offices of Attorney General, Colonial Secretary, Receiver General, Solicitor General, Surveyor General, Financial Secretary, Speaker or Chairman of Committees of the House of Assembly or Chairman of the Board of Works.

(2.) Any person holding the office of Director or Governor of the Newfoundland Savings' Bank.

(3.) Any person who may hold a commission or appointment in Her Majesty's Army or Navy.

(4.) Any person who may hold any office which now is or hereafter may be compulsory or obligatory on pain of fine or penalty for non-acceptance.

(5.) Any person who shall accept any acting appointment when such acting appointment shall not exceed six months: Provided that where any person who has accepted an acting appointment resigns the same and accepts another acting appointment within six months after such resignation, the said first named six months shall be held to run from the date of the first acting appointment.

(6.) Any person holding any office, place, or appointment from or under the Government, or from or under either branch of the Legislature, or from or under any public board or other public body, if such persons hold such office, place or appointment upon the condition of discharging and do truly discharge the duties thereof without being entitled to or actually receiving salary, pay, profit or emolument for the same.

(7.) Any person elected or appointed to any commission or committee, whether within or without the Legislature, for the purpose of discharging duties in relation to the Legislature or legislation, whether in or out of Legislative Session.

(8.) Any person appointed to perform or discharge any act or function in relation to the compensation of parties whose interests in lands or whose rights are affected by any Act of the Legislature: Provided that such appointment be for a specified purpose or definite object and be not of a permanent character, nor an office, place or appointment conferred for life, or during good behaviour, or during the pleasure of the Crown.

(9.) Any member of the Board of Revenue, or of the Board of Works, or of any Board of Education, or of any Board of Health, or any Commissioner of Pilots.

(10.) Any person acting as Attorney, Solicitor, Advocate, or Counsel for the Crown, the Government, or for either branch of the

Legislature, or for any public department, public board, or public body, in any civil, criminal, or *quasi* criminal proceeding.

(11.) Any member of an incorporated body, or a member of a firm or trading company, contracting originally or by way of assignment for the public service, when such contract is made for the benefit of such incorporated body, firm or company.

(12.) Any person taking or holding the debentures of the public debt or any stock the interest and repayment of which are guaranteed by the colony.

(13.) Any person who shall sell to the Government, or either branch of the Legislature, or any public board or body, any goods, wares or merchandize: Provided that such sale is not under or in the nature of a continuing contract, express or implied, with any of the persons aforesaid, for the supply of goods, wares or merchandize.

**3**. Whenever any member of the House of Assembly of this colony shall—

(1.) Accept any office, place, or appointment of profit or emolument from or under the Crown or the Government of this Colony; or,

(2.) From or under any board or public body, the members whereof are nominated by the Government; or,

(3.) Shall directly or indirectly, himself, or by any person whomsoever in trust for him or for his use or benefit, or on his account undertake, execute, or enjoy, in whole or in part, any contract or agreement for or on account of the public service; or,

(4) Shall, by writing under his hand, tender to the Governor the resignation of his seat in the said House of Assembly; or,

(5) Shall become bankrupt or declared insolvent;

his seat shall thereupon become vacant.

Provided, that this section shall not apply to any person mentioned in, and privileged by, sub-sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of section 2 of this chapter, except in case of the insolvency or bankruptcy of such person, or to any person holding any of the following offices, that is to say, of Attorney General, Solicitor General, Colonial Secretary, Receiver General, Surveyor General, Financial Secretary, Chairman of the Board of Works, and who being at the same time a member of the House of Assembly, shall resign his office and within six months after such resignation accept of any other of such

offices; unless the administration in or under which he held such office shall have resigned and a new administration shall have been formed and shall have occupied the said office.

**4**. Whenever a vacancy shall occur in the House of Assembly the Governor shall, within six months after the happening of such vacancy, issue a writ for the election and return of a member for the district in respect of which such vacancy has occurred.

**5** Nothing herein contained shall prevent a member so accepting any of the offices named in sub-section 1 of section 2, or who shall have resigned, or, having become bankrupt or insolvent shall have received a certificate of discharge according to law, from being re-elected a member of the House of Assembly.

**6**. Any member so resigning, and offering himself as a candidate at the election consequent on such resignation, shall bear the expenses of such election, so far as the same have been usually borne by the colony, and shall, before he shall be nominated as a candidate for such election, deposit with the Colonial Secretary such sum of money, not exceeding the amount paid by the colony for the last preceding election in the district for which such member had been returned, as the Governor in Council shall direct; which sum, or so much thereof as may be required for that purpose, shall be applied by the said Colonial Secretary in discharge of such expenses.

**7**. A member of the House of Assembly who receives sessional pay, voted by the Legislature, shall not be deemed on that account alone to hold an office, place or appointment of profit or emolument within the meaning of this chapter.

**8**. Any person holding a commission as a member of the Legislative Council of this colony, who shall hereafter be nominated as a candidate at any general or other election of members or of a member to serve in the House of Assembly of this colony, shall thereupon cease to be a member of the said Legislative Council, and the commission of such person as a member of the said Legislative Council shall thereupon and thereby become and be vacated and superseded.

**9**. If any person, by this chapter declared to be ineligible to be elected to, or disqualified to sit or vote in, the House of Assembly, shall be elected a member for any district, such election shall be void; and if any person disqualified, or whose seat shall have become vacant as aforesaid, by this chapter, shall sit or vote as a member of the House of Assembly, he shall, for each time he shall sit or vote, forfeit and pay the sum of two hundred and thirty dollars, to be recovered by any person who shall sue for the same in the Supreme Court,

# CHAPTER 5.

## Of the Office of Clerk of the House of Assembly.


SECTION
1.—Appointment of Clerk of Assembly; oath of office.
2.—Appointment of Clerk Assistant; oath of office.
3.—Duties of Clerk and Clerk Assistant.
4.—Similar to those in Imperial Parliament.


**1.** The Clerk of the House of Assembly shall be appointed as heretofore by the vote of the House, and shall when appointed take the oath of office before the Speaker of the House of Assembly, who is hereby empowered to administer the same, as follows:—

"I, , elected to the office of Clerk to the House of Assembly of Newfoundland, do swear that I will make true entries, remembrances and journals, of the things done and passed in the said Assembly."

**2.**—The Clerk Assistant of the House of Assembly shall be appointed as heretofore by vote of the House, and shall when appointed take the oath of office before the Speaker of the House, who is hereby empowered to administer the same, as follows:—

"I, , elected to the office of Clerk Assistant of the House of Assembly of Newfoundland, do swear that I will diligently, faithfully and impartially discharge the duties of clerk assistant to the House of Assembly, to the best of my knowledge and ability."

**3.** The Clerk and Clerk Assistant of the Assembly shall have the custody of and be responsible for the safe-keeping of the records of the House, and all despatches, bills, petitions and documents presented to or laid on the table of the House of Assembly, and shall produce the same when required by the Speaker or by his order on motion of any member of the House.

**4.** The general duties of the clerks of the House of Assembly, where no special provision is made, shall be similar to those of the clerks of the House of Commons in England, according to the practice of Parliament, and as may be provided by resolution of the House of Assembly.

## CHAPTER 6.

### Of Vacancy in the Office of Speaker.

SECTION 1.—When Speaker unable to attend House may elect member to act as Speaker.

**1.** Whenever the Speaker of the House of Assembly shall be unable to attend the House, upon the same being certified to the satisfaction of the House, the members or a majority of them present may elect from amongst them one of such members, who shall, during the absence of the Speaker, take the chair and act as Speaker; and every act passed and every order made and thing done by the said Assembly whilst such member is acting as Speaker as aforesaid, shall be as valid and effectual as if done whilst the Speaker himself was presiding in the chair.

# TITLE II.

## OF THE PUBLIC SERVICE, DEPARTMENTS AND WORKS.

## CHAPTER 7.

### Of the Board of Revenue.

SECTION
1.—Constitution of the Board of Revenue.
SECTION
2.—Pay to non-official members.
3.—Powers of Board.

**1.** The Receiver General shall be president of, and with five other persons, to be appointed by the Governor in Council, shall constitute the Board of Revenue, the members of which shall be sworn faithfully to discharge the duties of their office, and shall hold office during pleasure; the President, or in his absence the assistant Collector, and any other two members, shall be a quorum for the transaction of business.

**2.** There shall be paid to each non-official member, for every day's attendance at the board, two dollars a day: Provided that the whole amount to be paid to the said board shall not exceed the sum of two hundred and thirty dollars in any year.

**3.** The Board shall superintend the working and practical operation and effect of the revenue system, and report thereon to the Governor when required; they shall examine disputed claims for drawbacks, and grant certificates therefor, when allowed, and shall make any regulations necessary for preventing fraud in obtaining the same; they shall direct and carry on prosecutions against delinquent officers and their sureties; and also prosecutions for seizures, forfeitures, penalties and breaches of revenue laws, over which they have a general control; they may remit penalties in whole or part, and direct the restoration of property seized, or of the proceeds thereof; they shall, subject to the control of the Governor in Council, make such regulations as to the removal of spirituous liquors distilled in the colony after payment of duties thereon, and as to the carriage of goods coastwise, as may be necessary and expedient; they shall have authority to remit in whole or in part the duties on goods lost or destroyed in the warehouses, upon such terms as they may deem just; and may, under such restrictions and regulations as they may consider expedient, but subject to the control of the Governor in Council, permit payment or continuing security to be given for duties payable by outport importers, in cases where satisfactory sureties cannot be had on the spot for each successive importation, and also for the payment of duty on goods landed from steamships.

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# CHAPTER 8.

## Of the Customs, Warehouses, Distilleries, &c.

SECTION
1.—Interpretation.
2.—Customs' officers.
3.—Ports of entry; Officers; Alterations.
4.—Extra officers.
5.—Bribery and collusive practices.
6.—Oath of office.
7.—Security for conduct
8.—Public holidays.
9.—Vessels to report at Customs on arrival.
10.—Manifest; Forfeiture.
11.—Vessels arriving coastwise to report.
12.—Coasters and fishing vessels; Outward entry; Certificate thereon sufficient to 31st December.
13.—Vessels outward bound—entry; Content of cargo; Declaration.
14.—Goods imported reported for exportation, or at other than port of arrival, or to be transhipped; Security; Proviso; Payment of duties.
15.—Officers may board ships; Penalty; Powers on board.
16.—Goods not to be unladen without entry and warrant, nor unless where officer is; Penalty.
17.—Vessels within three miles of coast; Powers of officers.

SECTION
18.—Production of manifest; Penalty.
19.—Goods *ad valorem;* Declaration of value; Penalty;
20.—Original invoices to be exhibited; Oath; Absence of invoices; Oath.
21.—Importers to produce invoices and answer questions; Penalty.
22.—Valuation incorrect—detention and forfeiture; Sale; Surplus; Proviso; Perishable articles; Sale.
23.—Goods according to weight; Untrue weight; Detention and forfeiture; Appraisement; Sale.
24.—Entry of goods—Mode of.
25.—Entry and warrant to correspond with report and manifest; Forfeiture.
26.—When importer not sufficiently informed; Sight entry; Subsequent entry.
27.—Samples.
28.—Bonds to secure duties over $200, except wines, &c.
29.—Passenger steamers—Permit to deposit cargo in warehouse; Bond; Lien of owners and master reserved.
30.—Imported cattle.
31.—Clearance outward for imported goods.
32.—Surplus ship's stores.

SECTION
33.—Landing and entry of goods within twenty days, or officer may land; Sale after three months.
34.—Abatement of duties on damaged goods.
35.—Examination of damaged goods.
36.—Goods *ad valorem;* Damage; Abatement.
37.—Warehousing ports; Warehouses.
38.—Warehousing goods on first entry without paying duty.
39.—Securing warehoused goods.
40.—Bond for duties; Fresh security.
41.—Forfeiture of goods entered for warehousing.
42.—Goods entered to be warehoused—Account of.
43.—Moderate samples may be taken from warehouse.
44.—Expenses on warehoused goods.
45.—Forfeiture for dealing with goods without officer's authority.
46.—Sundays and holidays; Hours; Place of landing; Forfeiture.
47.—Entry for home use or exportation after entry for warehouse; Proviso; Unauthorized removal.
48.—Transfer of warehoused goods.
49.—All warehoused goods to be cleared after two years.
50.—Otherwise, sale; Unknown owners.
51.—Goods in warehouses may be sorted, separated, packed and re-packed.
52.—Fraudulently concealing or removing; Forfeiture.
53.—Damage in warehouse—Liability for.
54.—Removal from one port to another, or one warehouse to another.
55.—Account and security on removal.
56.—General Customs' regulations to apply.
57.—Security by exporters.
58.—Freight on warehoused goods.
59.—Remit duties on liquor for H. M. ships.
60.—Exportation; Drawback; Account; Oath; Proviso.
61.—Spirits, imported or carried coastwise; Size of casks; Proviso.
62.—Local distillation; Monthly account; Oath.
63.—Entry; Removal permit.
64.—Powers of officers.
65.—Forfeiture.
66.—Seizure and sale.
67.—Unauthorized possession; Penalty.
68.—Appointment of officers to remain in distilleries, and to report.
69.—Officers at distilleries to take the oath.
70.—Compensation.
71.—Penalty for officer absenting himself from distillery.
72.—Regulations as to attendance at distilleries.

SECTION
73.—Penalty for breach of rules.
74.—Unlawful removal of goods; Forfeiture.
75.—Seizures, obstruction: Penalty.
76.—Collusive seizures; Penalty.
77.—Disposition of vessels, goods, &c., seized for breach of revenue laws.
78.—Writ of assistance.
79.—Sale of things condemned; Proviso; Restoration.
80.—*Onus probandi* on question of payment of duties.
81.—Claim to things seized; Oath.
82.—Security on such claim.
83.—Notice of action
84.—Limitation of action.
85.—Probable cause; Certificate.
86.—Tender of amends; Payment into Court.
87.—On certificate of probable cause, five cents damages.
88.—Disposition of penalties.
89.—General penalty.
90.—Limitation; Suits for penalties.
91.—Labrador—Duties; Forfeiture; Power of officers; Proviso.
92.—Entry; Default; Seizure; Sale.
93.—Revenue ship to be deemed office.
94.—Place of sale.
95.—Spirits in casks less than thirty gallons.
96.—Breach of revenue laws, Labrador; Penalty.
97.—Witnesses; Power of court.
98.—Bonds for payment of duties; Prior claim.
99.—Forfeitures; Interpretation.
100.—Smuggling, a misdemeanor; Punishment.
101.—Harboring uncustomed goods; Forfeiture.
102.—Persons in concert having possession of uncustomed goods; Penalty.
103.—Procuring breach of revenue laws; Penalty.
104.—Unauthorized removal of goods detained by Customs' authorities; Felony.
105.—Prohibited goods; Penalty; Destruction.
106.—Officers—Neglect of duty.
107.—Passenger steamer—Stores for deposit of luggage.
108.—Carrying imported goods past a Custom House.
109.—Accommodation of Tidewaiters; Refusal to supply; Penalty; Detention of ship.
110.—Authority of Postmaster to detain mail matter for examination.
111.—Right of search.
112.—Prosecution of offences against light-house laws; Summary procedure; Detention of ship.
113.—Procedure, offences against Customs' laws generally; Jurisdiction.
114.—Right of appeal; Security.
115.—Prosecutor.

**1.** Whenever the several terms or expressions following occur in this chapter, or in any other Acts of the Legislature relating to the matters treated of in this chapter, the same shall be construed, respectively, in the manner hereinafter directed, that is to say, the term "master of any ship" shall mean "the person having or taking charge of such ship;" and the term "warehouse" shall mean "any place, whether house, shed, yard, timber-pond, or other place in which goods entered to be warehoused may

be lodged, kept and secured;" the term "proper officer" shall mean "any officer authorized to do the act referred to;" the term "collector" shall mean "the person collecting the revenue for the port;" and the terms "proprietor," "owner," "importer," and "exporter," shall include any person acting on their behalf, respectively.

**2.** The Governor in Council may appoint proper persons to execute the duties of the several officers necessary to the due collection and management of the revenue now levied, or which may hereafter be levied on goods, wares and merchandize imported into this colony and its dependencies, that is to say:

The Receiver General at St John's, who shall superintend the collection, receipt and payment of all the said revenue, and shall have under his direction and control:

An Assistant Collector at St. John's.
Landing and Tide Surveyor.
First Landing Waiter.
Second Landing Waiter.
Third Landing Waiter and Assistant Tide Surveyor.
First Clerk and Warehouse Keeper.
Second Clerk
Third Clerk.
Fourth Clerk.
Fifth Clerk.
The Clerk in the Landing and Tide Surveyor's Office.
Two Lockers.
Tide Waiters.
Boats and Boatmen at St. John's and Harbor Grace.
Sub-Collector at Tilt Cove, Bett's Cove, and Little Bay.
Sub-Collector at Twillingate.
Sub-Collector at Fogo.
Sub-Collector at Greenspond.
Sub-Collector at Trinity.
Sub-Collector at Carbonear.
Sub-Collector at Harbor Grace.
Sub-Collector at Brigus.
Sub-Collector at Oderin.
Sub-Collector at Burin.
Sub-Collector at Lamaline.
Sub-Collector at English Harbor, St. Jacques, Belleoram, and Bay-de-Nord.
Sub-Collector at Harbor Briton.
Sub-Collector at Gaultois.
Sub-Collector at Pushthrough.
Sub-Collector at La Poile.
Sub-Collector at Channell.
Sub-Collector at Bay St. George.

Sub-Collector at Bay of Islands.
Sub-Collector at Bonne Bay.
Sub-Collector at Flower's Cove.
Preventive Officer at Bonavista and Catalina.
Preventive Officer at Hant's Harbor.
Preventive Officer at Western Bay.
Preventive Officer at Bay Roberts.
Preventive Officer at Holyrood.
Preventive Officer at Harbor Main.
Preventive Officer at Portugal Cove.
Preventive Officer at Bay Bulls
Preventive Officer at Ferryland.
Preventive Officer at Renews.
Preventive Officer at Trepassey.
Preventive Officer at St. Mary's.
Preventive Officer at Salmonier.
Preventive Officer at Placentia.
Preventive Officer at Little Placentia.
Preventive Officer at Harbor Buffett.
Preventive Officer at Presque.
Preventive Officer at St. Lawrence.
Preventive Officer at Fortune
Preventive Officer at Grand Bank.
Preventive Officer at Burgeo.
Preventive Officer at Rose Blanche.
Preventive Officer at Cod Roy.
Preventive Officer at St Anthony.
Clerk and Landing Waiter at Harbor Grace.
Sub-Collectors at Labrador.

**3**. The Governor in Council may, from time to time, name the ports and places of entry, and further may abolish any office of sub-collector, and substitute a preventive officer therefor.

**4**. The Governor in Council, on the recommendation of the Board of Revenue, may appoint, from time to time, such additional or extra officers and tidewaiters as shall be necessary for the due security and collection of the revenue, and grant to such additional or extra officers and tidewaiters such salaries or allowances as may be deemed reasonable: Provided that no salary or allowance so granted shall exceed in amount the salary or allowance payable to the like officer; and also that a copy of the warrant appointing such additional or extra officers shall be laid before the Legislature, if then in session or if not then in session, then within one month from the commencement of its next following session.

**5**. If any officer, clerk or other person, acting in any office or employment under the provisions of this chapter, shall take or receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any sort or

description whatever, directly or indirectly, from any person, (not being a person duly appointed to some office under this chapter), on account of anything done, or to be done by him or in anywise relating to his said office or employment, except such as he shall receive under any order or permission of the Governor, such officer, so offending, shall, on proof thereof to the Governor in Council, be dismissed from his office; and if any person (not being a person duly appointed to some office under this chapter) shall give, offer, or promise to give any such fee, perquisite, gratuity or reward, such person, for every such offence, shall forfeit the sum of four hundred dollars.

**6** Every person who shall be appointed to any office or employment under this chapter, shall, on his admission thereto, make and sign the following oath before a Justice of the Peace, that is to say:—

"I, A. B., do swear that I will be true and faithful in the execution, to the best of my knowledge and power, of the trust committed to my charge and inspection, and that I will not require, take, or receive any fee, perquisite, gratuity or reward, whether pecuniary or of any other sort or description whatever, either directly or indirectly, or any service, act, duty, matter or thing, done or performed in the execution or discharge of any of the duties of my office or employment, on any account whatever, other than my salary, and what is, or shall be, allowed me by law, or by any special order of the Governor for the time being."

**7**. The several officers appointed as aforesaid, shall enter into and give such security, by bond, to Her Majesty, with sureties, for the due collection and safe keeping of such public moneys as may come into their hands, and for their good conduct in their respective offices and employment, as the Governor in Council shall deem reasonable and necessary.

**8**. No day shall be kept as public holiday by the officers appointed under this chapter, except Christmas Day, Good Friday, Her Majesty's birthday in every year, the first day in every new year, and any day appointed by the Governor, by proclamation, for a general fast or thanksgiving.

**9**. The master of every ship arriving in any port or place in this colony or its dependencies, whether laden or in ballast, shall come directly, and before bulk be broken, to the office of the Receiver General, Assistant or Sub-Collector, or other proper officer of the port or district where he arrives, and there make a report in writing to the said Receiver General, Assistant or Sub-Collector or other proper officer, of the arrival and voyage of such ship, stating her name and tonnage, the name of the master, and the number of the crew of such ship, and whether she be laden or in ballast, and if laden, the marks, numbers, and contents of every package and parcel of goods on board, and where the same were respectively laden, and where and to whom consigned, and where any and what goods, if any, had

been unladen during the voyage, as far as any such particular can be known to him; and the master shall, further, produce the certificate of registry of his ship, and shall answer all such questions concerning the ship and cargo, and the crew and voyage as shall be demanded of him by such officer; and if any goods be unladen from any ship before such report be made, or if the master fail to make such report, or make an untrue report, or do not truly answer to the questions demanded of him, he shall forfeit the sum of four hundred dollars, and if any goods be not reported, such goods shall be forfeited.

**10.** The master of every ship, shall, at the time of making such report, deliver to the Receiver General, Assistant or Sub-Collector, or other proper officer, a manifest of the cargo of such ship, and every such manifest shall set forth the name and tonnage of the ship, the name of the master, and the place or places where the goods, if any, were respectively taken on board, and of the place or places for which they are respectively destined, and shall contain a particular account and description of all the packages on board, with the marks and numbers thereon, and of the sorts of goods, and of the different kinds of each sort contained therein, to the best of the master's knowledge and belief, and the particulars of such goods as as are stowed loose, and of the names of the respective consignees, so far as the same can be known to the said master; and to such particular account shall be subjoined a general account or recapitulation, in words at length, of the total number of the packages of each sort, describing the same as by their usual names, or by such description as the same can be known by, and the different goods therein, and also the total quantities of the different goods stowed loose; and all goods not so manifested shall be forfeited.

**11.** The master of every ship having on board goods, wares, or merchandize subject to duty, arriving coastwise, at any port in this colony or its dependencies, shall, within twenty-four hours after arrival, and before bulk be broken, make due report in such form as may be prescribed for that purpose, containing the several particulars set forth in the eleventh section of this chapter.

**12.** The master of every vessel engaged in the fisheries or coasting trade of this colony or its dependencies, not having on board any goods, wares, or merchandize subject to duty, shall, before departure from the port of lading, deliver to the proper officer of Customs an entry outward, under his hand, of such ship, stating the name, country, and tonnage of the ship, the name of the master, and number of the crew; and thereupon the proper officer aforesaid shall give to the master a certificate, under his hand, that such vessel hath been specially cleared out for the fisheries or coasting trade, and such certificate shall be in force until the thirty-first day of December next after the date thereof, and such vessel shall be exempt from all obligations to clear at any Custom House upon departure from any port in the said colony and its dependencies during the continuance

of the season for which such certificate may have been granted; and if any vessel shall depart without such certificate, the master shall forfeit the sum of two hundred dollars: Provided that in case such vessel have on board, during the continuance of the season for which such certificate may have been granted, any goods, wares, or merchandize subject to duty, such vessel shall be subject and liable to the same rules, restrictions and regulations as vessels bound to ports beyond the seas are subject or liable to, or to such other regulations as to the carrying of goods coastwise, as the Board of Revenue may from time to time prescribe.

**13.** The master of any vessel bound outwards from any port or place in this colony or its dependencies to any port or place beyond the seas, shall deliver to the Receiver General, Assistant or Sub-Collector, or other proper officer, an entry outwards, under his hand, of the destination of such ship, her name, country and tonnage, (if British, the port of registry), the name and country of the master, the country of the owners, the number of the crew, and how many are of the country of such vessel; and before such vessel shall depart the master shall bring and deliver to the Receiver General, Assistant or Sub-Collector, or other proper officer, a content in writing, under his hand, of the goods, wares, or merchandize laden, and the names of the respective shippers and consignees of the goods, wares, or merchandize, with the marks and numbers of the packages and parcels of the same, and shall make and subscribe a declaration to the truth of such content, as far as any particulars can be known to him; and the master of every vessel bound outwards from any port in this colony or its dependencies to any port or place beyond the seas, whether in ballast or laden, shall, before departure, come before the Receiver General, Assistant or Sub-Collector, or other proper officer, and answer all such questions concerning the vessel and cargo, if any, and the crew, and the voyage, as shall be demanded of him by such officer; and thereupon the Receiver General, Assistant or Sub-Collector, or other proper officer, if such vessel be laden, shall make out and give to the master a certificate of the clearance of such vessel for the intended voyage, containing an account of the total quantities of the several sorts of goods wares and merchandize laden therein, or a certificate of her clearance in ballast, as the case may be; and if the vessel shall depart without such clearance, or if any goods be laden on board any such vessel before reporting outwards, or if the master shall deliver a false content, or shall not truly answer to the questions demanded of him, he shall forfeit a sum not exceeding four hundred dollars.

**14.** Whenever and so often as any goods, wares, or merchandize, subject to duty, shall be reported for importation at a port within this colony or its dependencies other than the port at which the importing ship shall first arrive, or for exportation, or shall be entered to be transhipped on board any vessel to be carried coastwise, the proprietor of such goods, wares, or merchandize, or his agent, shall give, or procure to be given, security by bond (in such of the approved forms A, B, C, in the schedule to this chapter, as may be applicable to the case), in treble the

amount of duties of importation, that such goods, wares, or merchandize shall be duly landed at the port for which they are reported for entry or to be landed, subject to the payment of duties leviable thereon at such last-mentioned port: Provided that no such goods, wares, or merchandize shall be reported for entry at a port or place within this colony and its dependencies, not duly constituted a port of entry, with a resident officer of Customs appointed to carry out the provisions of this chapter and of the other Acts of the Legislature relating to the management and collection of the revenue; but the duties leviable on all goods, wares and merchandize reported or entered to be landed, or intended to be landed, at any port or place in this colony or its dependencies, not being a duly constituted port of entry, shall be paid at the port at which the importing ship shall first arrive, and such goods, wares and merchandize shall be liable to the same duties, rules and regulations that the like articles are subject and liable to if entered for the due landing thereof at such first port of arrival.

**15** The Tide Surveyor, or other proper officer, may board any such ship arriving at any port or place in this colony or its dependencies, and freely stay on board until all the goods laden therein shall have been duly delivered from the same; and such officer shall have free access to every part of the ship, with power to fasten down hatchways and mark any goods before landing, and to lock up, seal, mark, or otherwise secure, any goods on board such ship; and if any place, or any box or chest be locked and the keys be withheld, such officers, if they be of a degree superior to tidesmen or boatmen, may open any such place, box or chest in the best manner in their power, and any goods found concealed on board of any such ship shall be forfeited; and if the proper officer shall place any lock, mark or seal upon any goods on board any such ship, and any such lock, mark or seal be wilfully opened, altered or broken before due delivery of such goods, or if any such goods be secretly conveyed away, or if the hatchways, after having been fastened down by such officer, be opened, the master of such ship shall forfeit a sum not exceeding four hundred dollars.

**16** No goods shall be unladen from on board any ship in any port or place in this colony or its dependencies, nor within three miles of the coast thereof, until due entry shall have been made of such goods and warrant granted for the unlading of the same; and no goods shall be so unladen except at some place at which an officer is appointed to attend to the unlading of the goods, or at some place for which a sufferance shall be granted by the Receiver General, Assistant or Sub-Collector, or other proper officer, of the port or district for the unlading of such goods; and no goods shall be so unladen except in the presence, or with the permission, in writing of the proper officer. And all goods unladen contrary to the regulations of this chapter, or any other law relating to the revenue, shall be forfeited, and the master of the ship from which the same shall be unladen shall forfeit the sum of four hundred dollars,

**17.** Any officer of the revenue may go on board any vessel being within three miles of any of the coasts of this colony or its dependencies, and stay on board while she remains in port or within such distance, and may examine on oath the master of such vessel touching his cargo and voyage; and if such master do not truly answer to the questions put to him he shall forfeit the sum of two hundred dollars.

**18.** The master of any such vessel shall, if required, produce his manifest to such revenue officer, and also deliver to him a copy thereof, and such officer shall note on the original manifest the date of production and return the same to the master; and if any such master shall refuse to produce his manifest, or to deliver a copy thereof as aforesaid, he shall forfeit the sum of two hundred dollars.

**19.** Whenever any goods are entered to pay duty according to the value thereof, such value shall be stated in the entry, and the importer or his known agent shall make a declaration, written or printed, upon the entry, setting forth that such value is the true value thereof; and if any person shall make such declaration, not being the importer or proprietor of such goods, nor his agent duly authorized by him, or if any person shall make an untrue declaration, such person shall forfeit the sum of four hundred dollars, and such affirmation shall be binding on the person by or on behalf of whom the same shall be made, and shall be in manner and form following, that is to say:—

"I, A. B., the importer, (or the known agent of the importer, as the case may be,) do declare that the articles mentioned in the entry above written, and contained in the packages therein specified, are of the value of dollars and cents, and that such is the true value thereof; and I do now tender the same for all duties.

Witness my hand, this day of 18 .

A B.

Taken before me, this day of

E. F.,
*Receiver General, Assistant or Sub-Collector,*
(as the case may be.)

**20.** At the time of entering such goods, wares or merchandize, the importer thereof, or his known agent, shall, if required by the Receiver General, Assistant or Sub-Collector, or other proper officer, exhibit the original invoices of such goods, wares or merchandize, and shall, if required, certify on oath that they are the original invoices, and that they contain all the dutiable goods imported by, or belonging to, or consigned to him in the packages specified in the entry, to the best of his knowledge or belief; or if he have not, and cannot procure the original invoices, he shall, if required, make oath thereof, and account for the want of the same,

and shall also state on oath what he believes to be the true value of the goods at the place whence they were imported as nearly as can be ascertained; all such oaths shall be signed by the party attesting, and taken before the Receiver General, Assistant or Sub-Collector, or other proper officer. Wrecked or derelict goods shall be charged for at *ad valorem* duty on the gross proceeds or value thereof in this market, less one-fifth for duties, charges and expenses.

**21.** Any time after entry, or within five days after landing, the importer thereof, or his known agent, shall, if required by the Receiver General, Assistant or Sub-Collector, or other proper officer, produce the invoice of such goods, wares or merchandize, and shall answer on oath all such questions relating to the value thereof as shall be put to him by such officer, who is hereby authorized to administer such oath; and in case of failure or refusal to produce such invoice, (unless there be no invoice) or to answer such questions, or to answer them truly, or if other than the true and real invoice be produced, or if such true and real invoice be altered by such importer or his known agent, then, and in every other case, such importer shall forfeit the sum of four hundred dollars.

**22.** If upon examination it shall appear to the Receiver General, Assistant or Sub-Collector, or other proper officer, that such articles are not valued according to the true value thereof, such officer may detain and secure such articles, and within five days from the landing thereof, take such articles for the use of the Crown; and the said Receiver General, Assistant or Sub-Collector, or other proper officer, shall thereupon in any such case, cause the amount of such valuation, with an addition of ten per centum thereon, and also the duties paid upon such entry, to be paid to the importer or proprietor of such articles in full satisfaction for the same, and shall dispose of such articles for the benefit of the Crown; and if the produce of the sale shall exceed the sum so paid and all charges so incurred by the Crown, one moiety of the overplus shall be given to the officer or officers who shall have detained or taken such articles, and the other moiety, detained for the benefit of the Crown, shall be paid to the Receiver General of this colony, to be applied to the public uses of the colony as the Legislature may direct: Provided that, should any articles whatsoever, seized and detained under this chapter, be of a perishable nature and likely to deteriorate in value by being kept to abide the provisions hereof, the Receiver General, Assistant or Sub-Collector, or other proper officer aforesaid, at the expiration of two days after such seizure and detention aforesaid, may cause any such articles, aforesaid, to be sold, and the proceeds thereof shall be subject to the same provisions and conditions as are contained in this chapter with respect to the articles themselves.

**23.** When the true weight shall not be given of articles, subject and liable to duty according to weight, the Receiver General, Assistant or Sub-Collector, or other proper officer, may detain and secure so much of such

articles as may be over the weight set forth in the entry, and, within five days from the landing thereof, take such articles for the use of the Crown; and the said Receiver General, Assistant or Sub-Collector, or other proper officer shall, thereafter, in any such case, cause the valuation to be calculated on such articles so detained as aforesaid, at the prices stated in the invoices, should the true invoices be produced by the importer to the satisfaction of the Receiver General, Assistant or Sub-Collector, or other proper officer, otherwise such articles shall be appraised by two fit persons, to be chosen by the said officer; and it shall be the duty of such appraisers to estimate such articles according to such value as they shall deem to be a fair first cost market price of such articles, free of charge, at the place from whence such goods may have been imported; and the said officer shall cause the amount of either of such valuations, together with an addition of ten per centum thereon, to be paid to the importers or proprietors of such articles in full satisfaction of the same, and shall dispose of such articles for the benefit of the Crown, and the produce of such sale shall be appropriated in the manner provided by the foregoing section of this chapter, in respect of goods detained and sold as undervalued.

**24**. The person entering any goods shall deliver to the Receiver General, Assistant or Sub-Collector, or other proper officer, a bill of the entry thereof, fairly written in words at length, containing the name of the importer and of the ship, and of the master, and of the place whence the goods were imported, and of the place within the port or district where the goods are to be unladen, and the particulars of the quality and quantity of the goods and the packages containing the same, and the marks and numbers on the packages, and shall deliver, at the same time, one or more duplicates of such bill, in which all sums and numbers may be expressed in figures, and the particulars to be contained in such bill of entry shall be written and arranged in such manner and form, and the number of duplicates shall be such as the Receiver General, Assistant or Sub-Collector, or other proper officer shall require; and such person shall, at the same time, pay down or otherwise secure all duties payable upon the said goods; and the said officer shall, thereupon, grant his warrant for the unloading of such goods.

**25**. No entry or warrant for the landing of any goods, or for the taking of any goods out of any warehouse shall be valid, unless the particulars of the goods and packages in such entry shall correspond with the particulars of the goods and packages purporting to be the same in the report and manifest of the ship, or in the certificate or other document, where any is required, by which the importation or entry of such goods is authorized, or unless the goods shall have been properly described in such entry by the denominations and with the character and circumstances according to which such goods are charged with duty or may be imported; and any goods taken or delivered out of any ship, or out of any warehouse, by virtue of any entry or warrant, not corresponding or agreeing in all such respects, or not properly describing the same, shall be deemed to be goods landed or taken without due entry thereof, and shall be forfeited.

**26.** If the importer of any goods shall make and subscribe a declaration before the Receiver General, Assistant or Sub-Collector, or other proper officer, that he cannot, for want of full information, make perfect entry thereof, such officer may receive an entry by bill of sight, for the packages or parcels of such goods, by the best description that can be given; and grant a warrant thereupon, in order that the same may be landed and secured to the satisfaction of the proper officer, and at the expense of the importer, and may be seen and examined by such importer in the presence of the proper officer; and within five days after the goods shall have been so landed, the importer shall make a perfect entry thereof, and pay or otherwise secure all duties payable thereon, and in default of such entry, such goods shall be secured by the proper officer; and if the importer shall not, within one month after such landing, make perfect entry of such goods, and pay down or otherwise secure the duties payable thereupon, together with charges of removal and warehouse rent, such goods shall be sold for the payment thereof, and the overplus, if any, shall be paid to the proprietors of the goods: Provided that, if it should appear to the Customs' officers that the goods cannot, at that time, be conveniently valued, the importer shall, if so required by the Customs' officer, enter the same at an approximate value, to be approved of by him; and if, on the production of the invoice or other evidence, it should appear that the importer has overvalued the goods, the amount of duty may be returned on an over-entry certificate, but, if not valued according to invoice or other evidence, the importer shall pass a post-entry for the difference.

**27** The proper officer may take such samples of goods as shall be necessary for ascertaining the amount of any duties payable on the same, and all such samples shall be disposed of and accounted for in such manner as the Governor in Council shall direct.

**28.** In any case where the duty set forth in any entry shall not amount to two hundred dollars, the Receiver General, Assistant or Sub-Collector, or other proper officer, shall forthwith collect the same before granting his warrant for the removal of the articles imported; and in case such duties shall amount to two hundred dollars, the Receiver General, Assistant or Sub-Collector, or other proper officer aforesaid, may secure the said duties by taking bond, in the form D. in the schedule hereto annexed, from the importer, owner or consignee to her Majesty, with two sureties for the payment thereof in four months from the date of such bond: provided that no bond shall be taken for duties payable on spirits distilled in this colony, or for malt or dextrinous liquors brewed or manufactured therein.

**29.** The Receiver General, Assistant or Sub-Collector, or other proper officer, may permit the master of any steamboat employed regularly in the conveyance of passengers, upon due report of such boat, to deposit the cargo in a warehouse, to be provided by the owner or agent of the boat and approved of by the Receiver General, the owner or agent of the boat

having first given general security by bond, in the form E. in the schedule hereto annexed, with two sureties for the payment of the full duties of importation on all such goods as shall be at any time so warehoused therein, or for the exportation thereof; and goods so deposited shall be deemed to be on board the importing steamboat, and shall be subject to the same regulations, penalties and forfeitures, as if they had not been taken thereout; and the master or owner of the steamboat shall have the same lien on the goods for freight or other charges as if the same had not been deposited in the warehouse, but shall not be entitled to any rents for the goods so deposited. The owner or consignee of the goods must make due entry thereof within six days from the time of their being so deposited in the warehouse.

**30.** The Receiver General, Assistant or Sub-Collector, or other proper officer, at the port where any vessel having on board any cattle may arrive, shall upon the application of the importer thereof, permit the immediate landing of the same: provided that at the time of the entry of such vessel due entry of and payment of the duties imposed by law on such cattle shall be paid.

**31.** No goods shall be imported into this colony or its dependencies as being imported from places beyond the seas, if any advantage attach to such a distinction, unless such goods appear by the docket, clearance or other proper document for the same, to have been duly shipped and cleared outwards for exportation.

**32.** The surplus stores remaining unconsumed on board of any ship arriving in this colony or its dependencies from ports beyond the seas, shall be subject to the same duties, restrictions and regulations as the like goods shall be subject to when imported by way of merchandize: provided that if it shall appear to the Receiver General, Assistant or Sub-Collector, or other proper officer in charge of the port or district where such vessel may arrive, that the quantity or description of such stores is not excessive or unsuitable under all the circumstances of the voyage, such stores if not landed shall be duty free.

**33** Every importer of any goods shall, within twenty days after the arrival of the importing ship, make due entry of such goods and land the same; and in default of such entry and landing, the proper officer may land and convey such goods to the Queen's warehouse; and if the duties payable upon such goods be not paid within three months after such twenty days shall have expired together with all charges of removal and warehouse rent, the same shall be sold, and the produce thereof shall be applied first to the payment of freights and charges and next of the duties, and the surplus if any shall be paid to the proprietor of the goods or any other person authorized to receive the same: provided that the officers of the Customs may remove any goods to the warehouse before the expiration of the said twenty days, if the consignees thereof are unknown and all other goods cleared from the ship.

**34**. If any goods, wares or merchandize, which were rated to pay duty according to the tale, weight, guage or measure thereof, shall have received damage during the voyage, abatement of such duties shall be allowed in proportion to the damage so received: provided that proof be made to the satisfaction of the officer in charge of the port or district in which the vessel importing such goods, wares or merchandize shall have arrived, that such damage was received after such goods, wares and merchandize were shipped, and before they were landed in this colony or its dependencies, and that such abatement be claimed at the time of first examination of such goods, wares or merchandize.

**35**. Upon such claim as aforesaid, the officers appointed to superintend the landing of such goods, wares or merchandize shall examine the the same with reference to such damage, and shall thereupon state the amount of damage received, and make a proportionate abatement of duties accordingly: provided that if such officers be incompetent to estimate such damage, or if the importer of such goods, wares or merchandize be not satisfied with the abatement made by them, the Receiver General, Assistant or Sub-Collector, or other proper officer in charge of the port or district, shall appoint two disinterested persons, experienced in the nature and value of such goods, wares or merchandize, to examine the same and report in writing the amount of damage so received as aforesaid, and an abatement of duties shall thereupon be made in proportion to the amount of damage thus ascertained.

**36**. If any goods, wares or merchandize imported into this colony, upon which duty *ad valorem* has been paid in full according to the invoice value, shall have received damage during the voyage to an amount exceeding fifty per cent. of such invoice value, the Customs officer may allow an abatement of such duties in proportion to the said damage, subject to the same conditions as to proof as are prescribed by section 34 of this chapter.

**37**. The Governor in Council may constitute any port in this colony or its dependencies a warehousing port for the purposes of this chapter; and the Receiver General, Assistant or Sub-Collector of any port so constituted may, by notice in writing under his hand, appoint from time to time such warehouses at such ports as shall be approved of by him for warehousing and securing of goods therein, and also in such notice declare what sort of goods may be so warehoused, and also by like notice revoke or alter any such appointment or declaration: provided that every such notice shall be first transmitted to the Colonial Secretary and be published in such manner as the Governor in Council shall direct.

**38**. The importer of any such goods into the said ports may warehouse the same in the warehouses so constituted or appointed without payment of any duty on the first entry thereof, subject nevertheless to the rules, regulations, restrictions and conditions hereinafter contained.

**39.** All goods so warehoused shall be stowed in such parts or divisions of the warehouse and in such manner as the Receiver General, Assistant or Sub-Collector as aforesaid, shall direct; and the warehouse shall be locked and secured in such manner, and shall be opened and visited only at such times, and in the presence of such officers, and under such rules and regulations as the Receiver General, Assistant or Sub-Collector shall direct; and all such goods shall, after being landed upon importation, be carried to the warehouse, or shall, after being taken out of the warehouse for exportation, be carried and shipped under such rules and regulations as the Receiver General, Assistant or Sub-Collector of the port shall direct.

**40.** Upon the entry of any goods to be warehoused, the importer of such goods, instead of paying, or otherwise securing the duties payable thereon, shall give bond, (as in form F., in the schedule annexed), with two sureties, to be approved of by the Receiver General, Assistant or Sub-Collector of the port, in treble the duties payable on such goods, with condition for the safe depositing of such goods in the warehouse mentioned in such entry, and for the payment of all duties payable upon such goods, or for the exportation thereof, according to the first account taken of such goods upon the landing of the same; and with further condition, that no part thereof shall be taken out of such warehouse until cleared from thence upon due entry, and payment of duty, or upon the entry for exportation; and with the further condition that the whole of such goods shall be so cleared from such warehouse, and the duties upon any deficiency of the quantity, according to the first account, shall be paid within two years from the date of the first entry thereof; and if, after such bond shall have been given, the goods, or any part thereof, shall be sold or disposed of, so that the original bonder shall be no longer interested in or have any control over the same, the Receiver General, Assistant or Sub-Collector, shall direct fresh security to be given by the bond (as in form G., in the schedule annexed,) with sureties, by the new proprietor or other person having control over such goods, and cancel the bond given by the original bonder of such goods, or exonerate him to the extent of the fresh security given.

**41.** If any goods which have been entered to be warehoused, shall not be duly carried into and deposited in the warehouse, or shall afterwards be taken out of the warehouse without due entry and clearance, or having been entered and cleared for exportation from the warehouse, shall not be duly carried and shipped, or shall afterwards be re-landed, except with the permission of the proper officer, the said goods shall be forfeited.

**42.** Upon the entry and landing of any goods to be warehoused, the proper officer shall take a particular account of the same, and shall mark the contents on each package, and shall enter the same in a book to be kept for that purpose; and no goods which have been so warehoused, shall be taken or delivered from the warehouse, except upon due entry, and

under the care of the proper officer, for exportation, or, upon due entry and payment of duty, for home use; and whenever the whole of the goods warehoused under any entry, shall be cleared from the warehouse, or whenever further time shall be granted for any such goods to remain warehoused, an account shall be made out of the quantity upon which the duties have been paid, and of the quantity exported, and of the quantity, to be then ascertained, of the goods still remaining in the warehouse, as the case may be, deducting from the whole the quantity contained in any original package, if any, which may have been abandoned for duties: and if, upon such account, there shall, in either case, appear to be any deficiency of the original quantity, the duty payable upon the amount of such deficiency shall then be paid.

**43**. The Receiver General, Assistant or Sub-Collector of the port may, under such regulations as he shall see fit, permit moderate samples to be taken, without entry of goods so warehoused, and without payment of duty, except as the same shall eventually become payable as on a deficiency of the original quantity.

**44**. The unshipping, landing and carrying of all goods, wares, and merchandize, and bringing them to the proper place for examination and weighing, putting them into scales, opening, unpacking, re-packing, bulking, sorting, lotting, marking and numbering, where such operations respectively are necessary or permitted, and removing to, and placing them in a proper place of deposit until duly delivered, shall be performed by or at the expense of the importer.

**45**. If any goods, wares, or merchandize shall be removed from any ship, wharf, or other place, previously to the examination thereof by the proper officer of customs, unless under the care or authority of such officer, or if any goods, wares, or merchandize, entered to be warehoused, or to be re-warehoused, shall be carried into the warehouse, unless with the authority or under the care of the proper officer, and in such manner, and within such time, and by such means of conveyance as such officer shall direct, such goods, wares or merchandize, shall be forfeited.

**46**. No goods, wares, or merchandize entered to be warehoused shall be unshipped from any ship, or be landed or put on shore, on Sundays or holidays, without the special permission of the Receiver General, the Assistant or Sub-Collector; nor shall they be so unshipped, landed, or put on shore, on any other day, except between the hours of eight in the morning and four in the afternoon, or during such other hours as may be appointed by the Receiver General; nor shall any such goods, wares, or merchandize, be unshipped or landed unless with the authority of the proper officer of Customs; nor shall they be landed, except at such wharf or place appointed for the landing of such goods, wares or merchandize; and if any such goods, wares or merchandize, shall be unshipped, landed or removed contrary thereto, the same shall be forfeited,

**47.** If, after any goods, wares, or merchandize shall be duly entered and landed to be warehoused, though not actually deposited in the warehouse, the importer shall further duly enter the same, or any part thereof, for home use or exportation, the same may be taken out for home use or exportation, as the case may be: Provided, that if any such goods, wares or merchandize shall be delivered, withheld or removed from the proper place of examination, without such entry for home use or for exportation, such goods, wares or merchandize shall be forfeited.

**48.** The property of and in any one or more parcels of any goods, wares or merchandize warehoused, shall be transferable from party to party on a transfer note, signed by the parties, or a written contract of sale, made, executed and delivered by a broker, or other person legally authorized for or on behalf of the parties, respectively: Provided that a transfer of such goods, wares, or merchandize, according to such sale, shall have been entered in the warehouse register, or book kept for that purpose, by the proper officer of Customs, who is hereby required to enter such transfer, with the date thereof, upon the application of the owner of such goods, wares or merchandize. Such transfer or sale shall be of whole packages only; and the party being the proprietor of such goods, wares or merchandize, for the time being, shall be deemed to be the importer thereof for the purposes of this chapter or any Act of the Legislature relating to the management and collection of the duties of importation.

**49.** All warehoused goods, wares and merchandize shall be cleared either for home use or exportation at the expiration of two years from the day on which the same were so warehoused, or within such further period and in such cases as the Receiver General, Assistant or Sub-Collector shall direct, unless the proprietor of such goods, wares, or merchandize shall be desirous of re-warehousing the same, in which case the same shall be examined by the proper officers, and the duties payable on any deficiency or difference between the quantity ascertained on landing and the quantity found to exist on such examination, together with the necessary expenses attendant thereon, shall be paid; and the quantity so found shall be re-warehoused in the name of the then proprietor thereof, in the same manner as on the first importation.

**50.** If any warehoused goods, wares, or merchandize shall not be duly cleared, exported, or re-warehoused, and the duties ascertained to be payable on the deficiencies, as aforesaid, shall not be paid at the expiration of two years from the previous entry and warehousing thereof, or within such further period as shall be directed as aforesaid, the same, if worth the duty thereon, shall, after three months' notice to the proprietor, if known, with all convenient speed, be sold, either for home use or exportation, with or without the consent of the owner or proprietor, and the proceeds thereof shall be applied to the payment of the duties, warehouse rent and charges, and the surplus, if any, shall be paid to the proprietor of such goods, wares, or merchandize, if known; but if such proprietor

cannot be found, such surplus shall be carried to the colony's account, to abide the claim of such proprietor on his appearing and making good his claim thereto; and if such goods, wares, or merchandize shall not be worth the duty, then the same, after such three months' notice aforesaid, may be exported or destroyed, with or without the concurrence of the proprietor thereof, or of the proprietor of the warehouse in which the same was so warehoused, as the Receiver General, Assistant or Sub-Collector shall see fit; and the duties payable upon any deficieney thereof shall be forthwith paid by the proprietor of the goods.

**51**. With the sanction of the Receiver General, Assistant or Sub-Collector, and after such notice given by the respective importers or proprietors, and at such times and under such regulations and restrictions as any of the said respective officers shall from time to time require and direct, it shall be lawful, in the warehouse, to sort, separate, pack and re-pack any goods, wares, or merchandize, and to make such alterations therein as may be necessary for the preservation, sale, shipment or disposal thereof: Provided that such goods, wares, or merchandize be re-packed in the packages in which they were imported, or in such other packages as any of the said respective officers shall permit; and after such goods, wares, or merchandize, have been so separated and re-packed in proper or approved packages, any of the respective officers may, at the request of the importer or proprietor of such goods, wares, or merchandize, cause or permit any refuse, damaged or surplus goods, wares, or merchandize, occasioned by such separation or re-packing, which may not be worth the duty, to be destroyed, and may remit the duty payable thereon; and also permit any packages of sugar and molasses, or other goods, wares, or merchandize, in casks, to be taken out of the warehouse, without payment of duty, for the purpose of being repaired or trimmed, or such other purpose as to any such respective officers may appear expedient, and in such quantities and under such regulations and restrictions, and with such security, by bond, for the return thereof, or the payment of the duties payable thereon, as any such officer may direct or require: Provided that the goods, wares, or merchandize, taken out of the warehouse for this purpose, shall not be deemed goods, wares, or merchandize duly cleared and delivered.

**52**. If the proprietor of any warehoused goods, or his agent, shall fraudulently conceal in, or remove from the warehouse, or abstract from any package, or transfer from one package to another, or otherwise, for the purpose of illegal removal or concealment, any warehoused goods, such goods shall be forfeited.

**53**. No compensation shall be made by such officers to the importer, proprietor, or consigneee of any good, wares, or merchandize, by reason of any damage occasioned thereto in the warehouse, except by their wilful act or default.

**54**. Any goods, wares, or merchandize, warehoused at any port in this colony or its dependencies, may be removed by sea or inland carriage to

any other port of entry therein, and be re-warehoused or entered for duty at such port, or with the permission of the proper officers of customs, removed from any warehouse in any port to any other warehouse in the same port, under such regulations as may be directed by the Receiver General, and with security, by bond, (in the form marked H, in the schedule of forms to this chapter,) in treble the amount of duties of importation, on the delivery to the proper officer, by the person requiring such removal, of an entry stating the particulars of the goods, wares, and merchandize required to be removed, the name of the port, or of the warehouse, if the same port, to which the same are intended to be removed and with such other information, and in such manner and form, as the Receiver General may direct or require.

**55**. On delivery of any goods, wares, or merchandize, for removal, an account containing the particulars thereof shall be transmitted by the proper officers of the port of removal to the proper officers of the port of destination, and the person requiring the removal shall enter into bond, (in the form marked H., in the schedule of forms to this chapter) with two sureties in treble the amount of duties payable on such goods, wares, or merchandize, for the due arrival and re-warehousing or entry for duty thereof at the port of destination within such time as the Receiver General, Assistant or Sub-Collector may direct; and such bond shall not be discharged unless such goods, wares, or merchandize shall have been produced to the proper officer, and duly re-warehoused or entered for duty at the port of destination within the time allowed for such removal, nor until the full duties payable on any deficiency of such goods, wares, or merchandize, not so accounted for, shall have been paid.

**56**. Upon the arrival of such goods, wares, and merchandize at the port or place of destination, the same shall be entered for duty or warehoused in the same manner, and under and subject to the same laws, rules and regulations, as far as the same can be made applicable, as are required on the entry for duty or warehousing of goods, wares, and merchandize on the first importation thereof.

**57**. Before any goods, wares or merchandize shall be entered outwards for exportation from the warehouse, the importer or his agents shall give security by bond (in the form marked I. in the schedule of forms to this chapter) in treble the duties of importation with two sureties, to be approved of by the Receiver General, Assistant or Sub-Collector, that such goods, wares or merchandize shall be duly shipped and exported, and shall be landed at the place for which they are entered outwards, or otherwise accounted for to the satisfaction of any of the respective officers.

**58**. Goods warehoused shall be liable for freight as if on shipboard.

**59**. The Receiver General may, under such regulations as may be made by the Governor in Council, remit the duties on wines and spirits

purchased and taken out of bond in original packages by officers of her Majesty's navy for use on board her Majesty's ships.

**60.** There shall be allowed upon the exportation from this colony and its dependencies of any goods, wares or merchandize, the duties on which were chargeable and paid according to the tale, guage, weight or measure thereof, a drawback of the full duties which shall have been so paid as aforesaid: provided that on every such exportation the exporter of such goods, wares or merchandize shall, before the same be laden on board of any ship or vessel, give notice in writing of such intended export, and shall deliver to the Receiver General, Assistant or Sub-Collector, or other principal officer in charge of the port or district, an account specifying the several articles intended to be exported, their name, quality and quantity, and shall annex to the said account an affidavit to be made before the Receiver General, Assistant or Sub-Collector, or other principal officer aforesaid, or any Justice for the district, that the full duties on such goods, wares and merchandize were paid at the time of the importation or entry thereof, and setting forth the date of such importation or entry, the name of the importing vessel, of the master thereof, and of the place whence such goods, wares and merchandize were imported, and of the establishment where such goods were manufactured, which account shall on the clearance of such goods, wares and merchandize, be signed by the Receiver General, Assistant or Sub-Collector, or other principal officer aforesaid; and on the production of certificates under the hand of the collector of her Majesty's customs at the port of importation in the United Kingdom, or the Receiver General or the collector of duties in any British possession, or under the hand and seal of the British Consul or Vice-Consul of any foreign port or place, or if there be no Consul or Vice-Consul in such foreign port or place, then under the hands and seals of two well-known merchants, of the actual and due landing of the several articles specified in such account as aforesaid at such port in the United Kingdom, or in such British possession, or in such foreign port or place, such exporter shall be entitled to receive the drawback granted by law: provided that no drawback shall be allowed on any goods, wares or merchandize, unless the same shall be exported in boats or vessels exceeding in burden forty tons of registered tonnage, and unless such drawback shall exceed the amount of twelve dollars on each article so exported, and be claimed within one year from the day of shipment aforesaid: provided nevertheless that the Receiver General, Assistant or Sub-Collector, or other proper officer, may allow a further time for the production of such certificate on reasonable cause shown, and that if it be proven to the satisfaction of the Receiver General, Assistant or Sub-Collector, or other proper officer, that the vessel in which such goods were so exported has been lost at sea or otherwise destroyed, and that such goods so exported are totally lost, the Receiver General, Assistant or Sub-Collector, or other proper officer, may return the duties paid on such goods as if proof had been given of the actual and due landing of the same. No drawback shall be allowed where the duties have been only secured by bond and not actually paid.

**61.** No spirits (except from Europe, the British West Indies, or the British Possessions in North America) shall be imported into this colony or its dependencies, or be carried coastwise from one port to any other thereof, in any cask or other vessel capable of containing liquors, not being of the size or contents of thirty gallons at least, or be exposed for sale, or be in possession of any person, unless the same shall have been transferred to such smaller cask or vessel, after it shall have been brought into the colony or its dependencies, of which the proof shall be upon the party in possession: Provided that nothing herein contained shall extend to any spirits imported in any ship in bottles as part of the cargo, nor to any spirits being really intended for the consumption of the seamen or passengers of such ship during her voyage and not being more in quantity than is necessary for that purpose; and if any spirits, or other goods, wares, or merchandize, shall be imported or brought into this colony or its dependencies, contrary to the prohibitions or restrictions contained in this chapter in respect thereof, then, and in every such case, such spirits or other goods, wares, or merchandize, together with the packages containing the same, shall be forfeited.

**62.** The owner or manager of every establishment in this colony where spirituous liquors are made, or his authorized agent, shall, on the first Monday in every month, render to the Receiver General, the Assistant or Sub-Collector of the colonial revenue, an account of the spirituous liquors made at the establishment since the last preceding account, and shall make and subscribe, before the Receiver General, Assistant or Sub-Collector, the following oath:—

I, A. B., do swear that the account, which I have now rendered, is a correct account of all spirituous liquors made at the establishment of since the day of , and that no spirituous liquors, to my belief, have been removed from the establishment without being guaged and the strength ascertained according to law, or without a permit from (the Receiver General, or Assistant or Sub-Collector) of the colonial revenue for the district.

**63.** Entry shall, at the same time be made of the liquors and duties thereon paid, or the liquors warehoused. If the duties be paid, the Receiver General, Assistant or Sub-Collector, shall give a removal permit in the following form:—

Permit A. B., to receive from the stock of the following liquors made by him, that is to say:—

Given under my hand at , this day of , 18 .

Signed, (as the case may be),
C. D., Receiver General, Assistant or Sub-Collector.

**64.** For investigating the correctness of the account and ascertaining the true quantity of liquors made at any establishment, the revenue

officers shall have the same power as by law conferred with respect to dutiable goods imported.

**65**. If any spirituous liquors shall be found in any establishment after the day on which the same ought to have been reported and entered, the same shall be forfeited.

**66**. If the duty on entry for home use be not paid within twenty-four hours thereafter the Receiver General, Assistant or Sub-Collector, or other proper officer, shall take the liquor into custody, and shall, within fifteen days, sell at public auction, giving ten days' public notice thereof, so much of the liquor as shall suffice to pay the duties on the whole, with the charges of storage and sale, and shall pay the surplus moneys and deliver the remaining liquors to the person entitled thereto.

**67**. If any spirituous liquors shall be found elsewhere than in possession of the maker, without the duties thereon having been paid, or without the removal permit where required, such liquors shall be forfeited, and every person in possession thereof shall forfeit two hundred dollars. The duty shall be deemed unpaid until the contrary be shown.

**68**. The Board of Revenue shall, if they see fit, employ officers for attending the manufactories or distilleries, so that one officer shall always be present at every manufactory or distillery while in operation, and the officers, under the direction of the Board, or of the Receiver General, Assistant or Sub-Collector, shall be employed alternately in superintending the progress of manufacture or distillation, and shall report the same at least twice a week to the Receiver General, Assistant or Sub-Collector.

**69**. The officers shall be sworn by the Receiver General, Assistant or Sub-Collector faithfully to attend the establishment to which they may be appointed, and to report to the Receiver General, Assistant or Sub-Collector, to the best of their belief, all quantities of spirituous liquors made thereat, and to use their utmost exertions for preventing the evasion of the revenue laws.

**70**. The officers shall be entitled to receive from the Receiver General, on the certificate of the board, one dollar each for every day on which they shall be actually employed.

**71**. If any officer shall absent himself from the establishment to which he may have been appointed while such establishment is at work, or shall in any way connive at an evasion of the revenue laws, he shall forthwith be dismissed from office, and shall forfeit two hundred dollars.

**72**. The Board may make regulations, as may be necessary, respecting the attendance of the officers, and the seasons of the year, and the hours, at which distilleries and manufactories shall be allowed to work, and for

checking frauds therein, for the supervision of the buildings in which the same are conducted, when not in operation as well as when at work; and for keeping closed such buildings when the manufactory or distillery may not be in operation; and for the expense incident thereto, and for searching for concealed pipes and other secret means by which fraud may be perpetrated, and with that object for opening doors or windows, or otherwise entering buildings, and taking down or removing partitions to search, which it may be proper to take down or remove for that purpose, and also for making the owners or occupiers of the buildings, when fraud shall be detected, liable to the expense incident thereto, and generally for insuring a faithful account of the duties payable, and for carrying into effect the provisions of this chapter in relation to the manufacture and distillation of liquors; and may cause to be entered in a book to be kept for that purpose by every distiller, the number of gallons of spirituous liquors distilled by him, and also the number of gallons sold or removed for consumption or sale, and the proof thereof; which book shall be always open in the day-time, Sundays excepted, for the inspection of any officer of Customs, who may take any minutes, memoranda, or transcript thereof; and such distiller shall render a general account in writing, taken from his books, of the number of gallons of spirituous liquors distilled and sold, or removed for consumption or sale, and the proof thereof, for the period of one month, or fractional part of each month preceding, as may be required; and shall also keep a book or books, in a form to be prescribed by the Board of Revenue, and to be open at all seasonable hours for inspection by any officer of Customs, wherein shall be entered, from day to day, the quantities of grain or other vegetable productions, or other substances put into the mash-tub by him, his agent or superintendent, for the purpose of producing spirits, and shall verify, or cause to be verified, the said entries, reports, books and general accounts, by oath or affirmation, to be taken before the Receiver General, or Assistant or Sub-Collector, which oath or affirmation shall be in the substance as follows:—

"I do swear (or affirm) that the foregoing entries were made by me on the respective days specified, and that they state, according to the best of my knowledge and belief, the whole quantity of spirituous liquors distilled and sold, or removed for consumption or sale, at the distillery owned by , at , in the district of , amounting to gallons, according to proof, prescribed by the law of this colony."

And the owner, agent, or superintendent of any distillery aforesaid, shall, in case the original entries required to be made in his books shall not have been made by himself, subjoin to the oath or affirmation aforesaid, the following oath or affirmation:—

"I do swear (or affirm) that, to the best of my knowledge and belief, the foregoing entries are just and true, and that I have taken all the means in my power to make them so."

**73**. Manufacturers and distillers shall observe the regulations made under the preceding section and give free access to the officers at all times,

by day or by night when required, and any manufacturer or distiller who shall not obey such regulations, or shall impede the officer in the execution of his duty, shall for every such offence forfeit the sum of two hundred dollars.

**74**. All vessels, boats, carriages and cattle made use of in the unlawful removal of goods liable to forfeiture under this chapter shall be forfeited; and every person who shall assist or be otherwise concerned in the importing, unshipping, landing or removal, or in harboring of such goods, or into whose hands or possession the same shall knowingly come, shall forfeit treble the value thereof or the penalty of four hundred dollars at the election of the officer appointed or to be appointed under this chapter, and the averment in any declaration, information or libel, to be filed or exhibited for the recovery of such penalty, that the officer proceeding has elected to sue for the sum therein mentioned shall be deemed sufficient proof of such election, without any other or further evidence of such fact.

**75**. All goods and all ships, vessels and boats, and all carriages and all cattle, liable to forfeiture under this chapter, shall be and may be seized and secured by any officer appointed under this chapter or other person duly employed for that purpose; and any person who shall in any way hinder, oppose, molest or obstruct any officer in the exercise of his office under this chapter, or any person duly employed thereunder in the exercise of such employment, or any person acting in aid or assistance of such officer or person so employed, shall for every such offence forfeit the sum of eight hundred dollars; and if any person shall by force or violence assault, resist, oppose, molest, hinder or obstruct any officer appointed under this chapter, or other person employed as aforesaid, in the exercise of his office or employment, or any person acting in aid or assistance as aforesaid, such person shall be deemed guilty of a misdemeanor, and on being convicted thereof shall be punished in the discretion of the court before whom such person is tried.

**76**. If any person appointed under this chapter, or any person duly employed for the prevention of smuggling, shall make any collusive seizure or deliver up, or make any agreement to deliver up or not to seize any vessel, boat, carriage, or any cattle or goods, liable to forfeiture under this chapter, or shall take any bribe, gratuity, recompense or reward for the neglect or non-performance of his duty, every such officer or other person shall forfeit for every such offence the sum of two thousand dollars; and every person who shall give or offer, or promise to give, or procure to be given, any bribe, recompense, gratuity or reward to, or shall make any collusive agreement with any such officer or person as aforesaid to induce him in any way to neglect his duty or to do, conceal or connive at anything whereby the provisions of this chapter may be evaded, shall forfeit the sum of eight hundred dollars.

**77**. All vessels, boats, goods and other things which shall be seized as forfeited under this chapter shall be deemed and taken as condemned,

and may be dealt with in the manner directed by law in respect to vessels, boats, goods or other things seized and duly condemned for breach of the provisions of this chapter, unless the person from whom such vessels, boats, goods and other things shall have been seized, or the owner of them, or some person authorized by him, shall within one month from the day of the seizing of the same give notice in writing to the person or persons seizing the same, or to the officer in charge of the nearest port or district, that he claims the said vessel, boat or goods, or other things, or intends to claim them.

**78**. Under the authority of a writ of assistance, granted by a Judge of the Supreme Court (who is hereby authorized and required to grant such writ of assistance, upon application made to him for that purpose by the principal officer appointed under this chapter), any officer appointed under this chapter, taking with him a peace officer, may enter any building or other place in the daytime and search for and seize and secure any goods liable to forfeiture, and in case of necessity break open any doors and any chests or other packages for that purpose; and any person in whose custody or possession any such goods may be found shall unless he account satisfactorily for the same, be liable to a penalty of four hundred dollars; and such writ of assistance when issued shall be in force during the whole of the reign in which the same shall have been granted, and for twelve months from the conclusion of such reign.

**79**. All vessels, boats, goods, and other things seized as liable to forfeiture under this chapter, shall be forthwith delivered into the custody of the officer of the port where the same shall have been seized, or of such other port as the Receiver General or Assistant Collector may direct; and such officer, after condemnation of such vessels, boats, and other things, shall cause them to be sold by public auction to the highest bidder: Provided that the Board of Revenue may order such vessels, boats, goods and other things, or the proceeds of such sale to be restored in such manner and upon such conditions as they shall think fit.

**80**. If any goods shall be seized or detained for the non-payment of the duties payable thereon, or any other cause of forfeiture, and any dispute shall arise whether the duties have been paid on the same, or whether the same have been lawfully imported, the proof thereof shall lie upon the owner or claimant of such goods, and not on the officer by whom the same shall have been seized or detained.

**81** No claim to anything seized under this chapter, and returned into Her Majesty's Courts for adjudication, shall be admitted unless such claim be entered in the name of the owner, with his residence and occupation, nor unless oath to the property in such thing be made by the owner, or by his attorney or agent, by whom such claim shall be entered, to the best of his knowledge and belief; and any person making a false oath thereto shall be deemed guilty of a misdemeanor, and be liable to the pains and penalties to which persons guilty of a misdemeanor are ordinarily liable.

**82.** No person shall be permitted to enter a claim to anything seized in pursuance of this chapter, until security shall be given in the Court where such seizure is prosecuted, in a penalty not exceeding two hundred and fifty dollars, to answer and pay the costs occasioned by such claim, and in default of giving such security, such things shall be adjudged to be condemned and forfeited.

**83.** No writ shall be sued out against, nor a copy of any process served upon any officer appointed under this chapter, or other person as aforesaid, for anything done in the exercise of his office or employment aforesaid, until one month after notice in writing shall have been delivered to him or left at his usual place of abode by the party or by the attorney or agent of the party who intends to sue out such writ or process, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent; and no evidence of the cause of such action shall be produced, except of such as shall be contained in such notice; and no verdict shall be given for the plaintiff unless he shall prove on the trial that such notice was given, and in default of such proof, the defendant shall receive in such action a verdict and costs.

**84.** Every such action shall be brought within three months after the cause thereof, and the defendant may plead the general issue and give the special matter in evidence; and if the plaintiff shall become non-suited or shall discontinue the action, or if, upon verdict or demurrer, judgment shall be given against the plaintiff, the defendant shall receive treble costs, and have such remedy for the same as any defendant can have in other cases where costs are given by law.

**85.** In case any information or suit shall be brought to trial on account of any seizure made under this chapter, and a verdict shall be found for the claimant thereof, and the Judge or Court before whom the case shall have been tried shall certify on the record that there was a probable cause of seizure, the claimant shall not be entitled to any costs of suit, nor shall the person who made such seizure be liable to any action, indictment, or other suit or prosecution on account of such seizure; and if any action, indictment, or other suit or prosecution shall be brought to trial against any person on account of such seizure, wherein a verdict shall be given against the defendant, the plaintiff, besides the things seized or the value thereof, shall not be entitled to more than five cents damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined more than one dollar.

**86.** Such officer, within one month after such notice, may tender amends to the party complaining, or his agent, and plead such tender in bar to any action, together with other pleas; and if the jury shall find the amends sufficient, they shall give a verdict for the defendant, and in such case, or in case the plaintiff shall become non-suited, or shall discontinue

his action, or judgment shall be given for the defendant upon demurrer, then such defendant shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only: Provided, that such defendant may, by leave of the Court, at any time before issue joined, pay into court as in other actions.

**87.** In any such action, if the Judge or Court before whom such action shall be tried, shall certify upon the record that the defendant or defendants in such action acted upon probable cause, then the plaintiff in such action shall not be entitled to more than five cents damages, nor to any costs of suit.

**88.** All fines, forfeitures and penalties recovered under the provisions of this chapter, shall be paid into the hands of the Receiver General, and shall be by him divided and paid as follows, that is to say: After deducting the charges of prosecution and sale, one eighth part, in lieu of duty, to the colony; three-eighths to the person who shall inform for the same; three-eighths to the officer who shall seize and sue for the same; and the remaining one-eighth to the Board of Revenue: Provided, that the said Board of Revenue may distribute such remaining eighth part of such net produce among all or any of the seizing officers or other persons aiding or assisting them or any of them, to effect the seizure, in such proportions as the said board may deem reasonable; and that when the officer who shall seize and sue for the same shall be the informer, he shall be entitled to receive six-eighths or three-fourths of the said full net proceeds.

**89.** In all cases in which no fine, penalty, or forfeiture is imposed or provided for by this chapter, for a breach or violation of any of the provisions thereof, all persons offending against the same in any way, shall forfeit and pay a sum not exceeding two hundred dollars, to be recovered and appropriated in like manner as other fines and penalties are under this chapter.

**90.** All actions or suits for the recovery of any of the penalties or forfeitures imposed by this chapter may be commenced or prosecuted at any time within three years after the committing of the offence, by reason whereof such penalty or forfeiture shall be incurred, any law, usage, or custom to the contrary thereof notwithstanding.

**91.** All goods landed at Labrador shall be subject to the duties imposed upon the like goods imported into any part of this colony or its dependencies, and to the same laws, rules and regulations as though they were on board the importing ship on arrival, before such landing; and unless the owners or their agents shall duly account for all such goods to any other officer of the revenue appointed to collect duties at Labrador, and, to his satisfaction, pass entries for the same, and pay the duties thereon, such goods shall be forfeited; and any such officer may, at any time between sunrise and sunset, enter into any building or place of any

person, dealing in or having in his possession dutiable goods, and take an account thereof; and if such owner or agent shall refuse to open the doors, or shall in anywise obstruct such officer, he shall forfeit the sum of four hundred dollars; and such officer may, if he think fit at any time so to do, take with him a writ of assistance, and proceed therewith in manner by law in that behalf directed in similar cases: Provided, that nothing in this section shall exempt from duty, under other provisions of the law, goods imported at Labrador but not landed.

**92.** Every importer of any goods at Labrador shall, within two days after importation, make due entry of such goods, and pay the duties thereon, and, if required by the collector or sub-collector, land the said goods; and in default of such entry and payment of duties the collector or sub-collector may seize and sell the said goods, or so much as may be necessary for the payment of all duties on such importation, paying over the surplus of the proceeds, after the payment of such duties and expenses of seizure and sale, to the proprietor of such goods or to any person authorized to receive the same.

**93.** For the purpose of the collection of the revenue at Labrador, the office of collector or sub-collector, where there is no office on shore, shall be held to be in the ship or vessel in which such collector or sub-collector shall be conveyed.

**94.** Goods seized as forfeited at Labrador may be sold by the collector or sub-collector, under the provisions of the laws relating to the revenue, at any port or place such collector or sub-collector may deem expedient.

**95.** The Governor in Council may, by instructions to be given to the collector or sub-collector in that behalf, authorize the importation and entry of, and payment of duties upon, spirits imported into Labrador in casks containing less than thirty gallons.

**96.** Every person who shall be concerned in landing or unshipping at Labrador any goods, wares or merchandize liable to duty, the duty on which have not been paid or secured, shall forfeit and pay a penalty of four hundred dollars.

**97.** In any proceeding for any such penalty or forfeiture, the Court, Judge or Justice of the Peace may compel the appearance of any witness by warrant, either in the first instance, or upon a summons to such witness being disobeyed

**98.** All bonds hereafter taken for the payment of duties under this chapter, or any act of the Legislature for the payment, regulation or collection of any duties levied in this island and its dependencies, shall constitute and be a prior claim upon the estate, lands, goods, chattels, credits and effects of the importer, consignee or other person executing such bond,

from the time the person executing such bond shall be actually insolvent until the amount thereby secured shall be paid.

**99.** The forfeiture of a vessel shall include all her tackle, apparel and furniture whatsoever; and forfeiture of goods shall include the packages containing them.

**100.** If any person knowingly and wilfully, with the intent to defraud the revenue of this colony, smuggles or cladestinely introduces into Newfoundland or its dependencies any goods subject to duty, without paying or accounting for the duty thereon, or makes out, or passes or attempts to pass through any Custom-house therein, any false, forged or fraudulent invoice, or in any way attempts to defraud the revenue by evading the payment of the duty, or any part of the duty payable on any goods, every such person, his, her, or their aiders or abettors shall, in addition to any other penalty or forfeiture to which they may be subject for such offence, be deemed guilty of a misdemeanor, and, on conviction, shall be liable to a penalty not exceeding two hundred dollars, and not less than twenty dollars, or to be imprisoned for a term not exceeding one year, or to both, in the discretion of the Court before whom the conviction is had.

**101.** If any person knowingly harbors, keeps, conceals, purchases, sells, or exchanges, any goods illegally imported into this colony or its dependencies, whereon the duties lawfully payable have not been paid, such person shall, for such offence, forfeit double the value of the said goods, as well as the goods themselves.

**102.** If any five or more persons in company are found together, and they, or any of them, have any goods liable to forfeiture under this chapter, every person in such company having such goods in his possession, and every other person in such company having a knowledge thereof, shall be guilty of a misdemeanor, and on conviction, shall be liable to a penalty of fifty dollars, and in default of payment thereof, to imprisonment for a period not exceeding one year.

**103.** Any person, who, by any means, procures or hires any person or persons, or who deputes, authorizes or directs any person or persons to assemble for the purpose of being concerned in the landing or unshipping or carrying or conveying of any goods which are prohibited to be imported, or the duties for which have not been paid or secured, shall, for every person so procured or hired, forfeit the sum of one hundred dollars.

**104.** If any person, whether pretending to be the owner or not, either secretly or openly, and with or without force or violence, takes or carries away any goods, vessel or carriage, or other thing, which has been seized or detained on suspicion, as forfeited under this chapter, and without the permission of the officer who has seized the same, or some other competent authority before the same has been declared by competent authority

to have been seized without due cause, such person shall be deemed to have stolen such goods, being the property of Her Majesty, and to be guilty of felony, and shall be liable to punishment accordingly.

**105.** The following goods shall not be imported into this colony or its dependencies under the penalty of one hundred dollars, and, if imported, shall be forfeited and forthwith destroyed, together with the parcel or package of goods in which the same may be found, that is to say :—Books, drawings, pictures, figures, models, paintings and printings of an immoral or indecent character.

**106.** If any officer of the Customs, or any person who, with the concurrence of the Governor in Council, expressed either by special order or appointment, or by general regulation, is employed for the prevention of smuggling, having notice, or being aware that any dutiable goods have been, or are being, or about to be introduced, into this colony or its dependencies in violation of this chapter, or of the provisions of the laws now or at any time hereafter, in force relating to the Customs, shall refuse or neglect to seize such goods, or to do any action in relation to the same, or to such violation of law, or required to be done by the laws relating to Customs, such officer or person shall forfeit, for every such refusal or neglect of duty, the sum of two hundred dollars, and shall be dismissed from his office.

**107.** The owner or agent of all steamships, regularly employed in the conveyance of passengers inwards or otherwise, shall provide a suitable store or place, to be approved by the Receiver General, for the deposit of passengers' luggage or other goods that may be landed from such steamships for examination by Customs' officers.

**108.** If any goods imported into this colony or its dependencies, at any other place than some port or place of entry where a Custom House is then lawfully established, are carried past such Custom House, or removed from the place appointed for the examination of such goods by the proper officer of the Customs at such port or place, before the same have been examined by the proper officer, and all duties thereon paid, and a permit given accordingly ; or, if any vessel with dutiable goods on board enters any place other than a port of entry, (unless from stress of weather or other unavoidable cause), such goods (except those of an innocent owner) shall be forfeited, together with the vessel in which the same were imported, if such vessel is of less value than eight hundred dollars ; and if such vessel is worth more than that sum, it may be seized, and the master or person in charge thereof shall incur a penalty of eight hundred dollars, and the vessel may be detained until such penalty be paid, or security given for the payment thereof ; and, unless payment be made or satisfactory security given within thirty days, such vessel may, at the expiration thereof, be sold to pay the penalty.

**109.** If any master or owner, or other person for the time being in charge, of any vessel in which any tidewaiter, or other Customs' officer lawfully is, shall refuse to supply for such tidewaiter or other officer suitable board, maintenance and accommodation, he shall incur a penalty not exceeding one hundred dollars, and in default of payment shall be liable to imprisonment for a period not exceeding one month, or both fine and imprisonment, and to satisfy such penalty with costs of procedure such vessel may be detained, and, after thirty days from conviction, sold to satisfy the same; the balance, if any, after deducting such penalty and costs, may be returned to the owner or master, or person in charge as aforesaid.

**110.** The Postmaster General, or any postmaster or way officer, by him to that effect duly authorized, may detain any post letter, or other article of mail matter suspected to contain any contraband goods, wares or merchandize, or any goods, wares or merchandize, on the importation of which into this colony any duties of Customs are by law payable, and suspected to have been enclosed therein, and sent by post to evade payment of such duties, and forward the same to the nearest collector, sub-collector, or preventive officer of Her Majesty's Customs, who, in the presence of the person to whom the same may be addressed, or in his absence, in case of non-attendance after due notice in writing from such collector, sub-collector, or preventive officer, requiring his attendance, left at or forwarded by the post, according to the address on the letter or other article of mail matter, may open and examine the same; and if, upon any such examination, any contraband goods, wares or merchandize, or any goods, wares or merchandize, on the importation of which into this colony any duties of Customs are payable, are discovered, such collector, sub-collector, or preventive officer, may detain the letter or other article of mail matter and its contents for the purpose of prosecution or forfeiture; and if no contraband goods, wares or merchandize, or dutiable goods, wares or merchandize, are discovered in such letter or other article of mail matter, it shall, if the party to whom it is addressed be present, be handed over to him on his paying the postage (if any) charged thereon, or if he is not present, it shall be returned to the Post Office and be forwarded to the place of address.

**111.** Any officer of customs, or person by him authorized, may search any person whom he may have reasonable cause to suspect of having uncustomed or prohibited goods secreted about his person.

(1.) Whoever obstructs or offers resistance to such search, or assists in so doing, shall incur a penalty of one hundred dollars.

(2.) Any person suspected as aforesaid may be questioned by such officer, whether he has any dutiable goods about his person, and if he denies having any such goods, or does not produce such as he may have, and any such goods are found upon him on being searched, the goods shall be forfeited, and he shall forfeit double the value thereof.

(3.) Before any person can be searched as aforesaid, such person may require the officer to take him before some Justice of the Peace, or before the collector, or chief officer of Customs at the place, who shall, if he see no reasonable cause for search, discharge such person; but, if otherwise, he shall direct such person to be searched, and if a female, she shall not be searched by any but a female.

(4.) Any officer required to take any person before a justice or chief officer as aforesaid, shall do so with all reasonable despatch. If any officer requires any person to be searched without reasonable cause for supposing that he has uncustomed or prohibited goods about his person, such officer shall forfeit and pay any sum not exceeding forty dollars.

**112**. All offences against the laws respecting light dues and lighthouses may be prosecuted before a stipendiary magistrate in a summary manner, and on conviction the offender shall be liable to a penalty not exceeding two hundred dollars, and in default of payment to imprisonment for a term not exceeding six months. In case of such conviction, the vessel belonging to or commanded by the offender shall, where a pecuniary penalty is imposed, be detained until payment thereof, and in default of payment after thirty days from such conviction, such vessel may be sold, and the proceeds thereof applied to the payment of the penalty and costs, and the balance, if any, shall be returned to the owner.

**113**. All offences committed against this chapter, and all penalties and forfeitures incurred thereunder, may be prosecuted, sued for, and recovered, in the Supreme Court as a Court of Admiralty, or upon information, and without a jury, or before a Justice of the Peace; but no penalty exceeding two hundred dollars shall be imposed by such justice, nor imprisonment for any term exceeding six months: Provided that either party shall, in the Supreme Court, upon an information, have the right, upon application, to have a jury for the trial thereof, as in ordinary cases of felony or misdemeanor, according to the charge involved.

**114**. If any person shall feel himself aggrieved by any judgment or conviction of a Magistrate or Justice of the Peace, he shall have liberty to appeal to the then next sitting of the Supreme Court, provided notice of the same be given to the convicting Magistrate within four days after such judgment or conviction shall have been made or given; and, if required by such Magistrate, recognizance or other security, with or without sureties, shall be entered into to abide by the judgment of the Supreme Court thereon.

**115**. No suit shall be commenced for the recovery of any penalty or forfeiture under this chapter, except in the name of the principal officer appointed under this chapter, or in the name of Her Majesty's Attorney or Solicitor General of this colony.

## SCHEDULES.

### A.

BOND GIVEN FOR THE REMOVAL OF GOODS REPORTED FOR IMPORTATION AT ANOTHER PORT IN THE COLONY.

Know all men by these presents, that we (importer and two sureties) are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, in the sum of (treble the amount of the duties to be set down in words, and not in figures), of good and lawful money of Great Britain, to be paid to our said Lady the Queen, her heirs and successors, to which payment well and truly to be made, we bind ourselves, and each of us by himself, for and in the whole, our heirs, executors and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this day of , in the year of the reign of Her said Majesty, and in the year of our Lord one thousand eight hundred and .

Whereas, the above bounden (importer) has given notice of his intention to convey or remove to in the ship or vessel , the following goods, that is to say:

which said goods were on the day of , in the year one thousand eight hundred and reported inwards, at this port of St. John's, by the said ship or vessel from , for importation at aforesaid.

Now, the condition of this obligation is such, that if the said goods, and every part thereof, shall be duly cleared outwards, and landed at aforesaid, and if within the space of days from the date hereof, the above bounden shall produce to the Receiver General or other proper officer at St. John's aforesaid, a certificate under the hand of the Sub-Collector, or other proper officer of the Customs at , aforesaid, stating that the whole and every portion of the said goods have been landed at , aforesaid, then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered, [L. S.]
in presence of [L. S.]
[L. S.]

### B.

BOND GIVEN FOR THE CLEARANCE OF GOODS REPORTED FOR EXPORTATION.

Know all men by these presents, we (importer and two sureties) are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, in the sum of (treble the amount of the duties to be

set down in words, and not in figures), to be paid to our said Lady t Queen, her heirs and successors; to which payment well and truly to be made, we bind ourselves, and each of us by himself, for and in the whole, our heirs, executors and administrators, and every of them firmly by these presents. Sealed with our seals. Dated this day of , in the year of the reign of Her said Majesty, and in the year of our Lord one thousand eight hundred and

Whereas the above bounden (importer) has given notice of his intention to export to in the ship or vessel , the following goods, that is to say :—

which said goods were, on the day of , in the year one thousand eight hundred and , reported for exportation to , aforesaid, by the said ship or vessel , from .

Now, the condition of this obligation is such that if the said goods, and every part thereof, shall be duly exported to and landed at , aforesaid, and if, within the space of days from the date hereof, the above bounden shall produce to the Receiver General or other proper officer at , aforesaid, a certificate under the hand of , at , aforesaid, stating that the whole and every portion of the said goods have been landed at , aforesaid, then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed and delivered, [L. S.]
in presence of [L. S.]
[L. S.]

## C.

BOND GIVEN ON ENTRY OF GOODS TO BE TRANSHIPPED.

Know all men by these presents, we, (importer and two sureties), are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, in the sum of (treble the amount of the duties to be set down in words, and not in figures), of good and lawful money of Great Britain, to be paid to our said lady the Queen, her heirs or successors; to which payment well and truly to be made we bind ourselves, and each of us by himself, for and in the whole, our heirs, executors and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this day of , in the year of the reign of Her said Majesty, and in the year of our Lord one thousand eight hundred and .

Whereas the above bounden has given notice of his intention to tranship on board the ship or vessel , bound to , the following goods, that is to say :

which said goods were, on the day of , in the year one thousand eight hundred and , reported inwards, at the port of St. John's, by , master from .

Now, the condition of this obligation is such, that if the said goods, and every portion thereof, so reported inwards, as aforesaid, shall be duly and faithfully transhipped from the said import ship or vessel , to the said ship or vessel , and within the space of days next following the date hereof, duly entered and landed, without alteration or diminution at the port of , aforesaid; and within the space of days from the date hereof, the above bounden shall produce to the Receiver General or other proper officer at , aforesaid, a certificate under the hand of the Sub-Collector, or other proper officer of Customs at , aforesaid, stating that the whole, and every portion of the said goods, have been there duly landed; then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed and delivered, [L. S.]
in the presence of [L. S.]
[L. S.]

## D.

BOND TO BE GIVEN BY THE IMPORTER FOR DUTIES ON GOODS IMPORTED

Known all men by these presents, we, (importer and two sureties) are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, in the sum of (treble the amount of the duties to be set down in words, and not in figures), of good and lawful money of Great Britain, to be paid to our said Lady the Queen, her heirs or successors; to which payment well and truly to be made, we bind ourselves, and each of us by himself, for and in the whole, our heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this day of , in the year of the reign of Her said Majesty, and in the year of our Lord one thousand eight hundred and .

Whereas the above bounden (importer) has lately imported into the port of , in a ship or vessel called , whereof is master, from , the undermentioned goods, namely:

the duties in respect whereof, amounting to , have not been paid, and the payment of which duties he is desirous of securing, pursuant to law.

Now, the condition of this obligation is such, that if the full duties, as aforesaid, due and payable on the importation of such goods, be paid to the Receiver General, or other proper officer, at the said port of ,

within four months (the month to be reckoned twenty-eight days) from the date of the first entry thereof, then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed and delivered, [L. S.]
in the presence of [L. S.]
[L. S.]

## E.

BOND TO BE GIVEN FOR GOODS LANDED AND WAREHOUSED FROM STEAMERS.

Known all men, &c.

Whereas the above bounden expects to arrive at the port of St. John's within the space of one year from the date hereof, certain steamships belonging to company, each having on board certain goods, such as may be reported at the Custom House by the masters of the respective ships on the arrival of each ship respectively, the duties in respect whereof have not been paid, and which goods he is desirous of depositing in a warehouse on arrival at , pursuant to law.

Now, the condition of this obligation is such, that if all the goods so imported shall be safely deposited in such warehouse, situated as aforesaid, and shall be either duly exported or the full duties due and payable on the importation of such goods, or on such part thereof as shall not have been exported as aforesaid, be paid to the Receiver General or other proper officer at the said port of , according to the first account taken of such goods upon the landing of the same, and if no part thereof shall be taken out of such warehouse until cleared from thence upon due entry and payment of duty (if intended for home consumption, or upon due entry, if intended for exportation); and if the whole of the said goods shall be so cleared from such warehouse, and the duties upon any deficiency of quantity, according to such first account, shall be paid within two years from the date of the first entry thereof, then this obligation to be void, otherwise to be and remain in full force and effect.

Signed, sealed, and delivered, [L. S.]
in presence of [L. S.]
[L. S.]

## F.

BOND TO BE GIVEN OF GOODS FOR WAREHOUSE.

Know all men by these presents, we, (importer and two sureties), are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, in the sum of (treble the amount of the duties to be set down

in words, and not in figures), of good and lawful money of Great Britain, to be paid to our said Lady the Queen, her heirs or successors; to which payment well and truly to be made, we bind ourselves and each of us, by himself, for and in the whole, our heirs, executors, and administrators, and every of them, firmly, by these presents. Sealed with our seals. Dated this day of , in the year of the reign of Her said Majesty, and in the year of our Lord one thousand eight hundred and .

Whereas the above bounden (importer) has lately imported into the port of , in a ship or vessel called the , master, from , the undermentioned goods, namely:

the duties in respect whereof have not been paid, and which goods he is desirous of depositing in a warehouse situate at , pursuant to law.

Now, the condition of this obligation is such, that if all the goods so imported shall be safely deposited in such warehouse, situate as aforesaid, and shall be either duly exported, or the full duties due and payable on the importation of such goods, or on such part thereof as shall not have been exported as aforesaid, be paid to the Receiver General or other proper officer at the said port of , according to the first account taken of such goods upon the landing of the same, and if no part thereof shall be taken out of such warehouse until cleared from thence upon due entry and payment of duty, if intended for home consumption, or upon due entry if intended for exportation; and if the whole of such goods shall be so cleared from such warehouse, and the duties upon any deficiency of quantity, according to such first account, shall be paid within two years from the date of the first entry thereof, then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered, [L. S.]
in the presence of [L. S.]
[L. S.]

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## G.

BOND TO BE GIVEN BY THE PURCHASER OF GOODS IMPORTED AND WAREHOUSED.

Know all men by these presents, we, (new proprietor and two sureties), are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, in the sum of (treble the amount of the duties to be set down in words, and not in figures), of good and lawful money of Great Britain, to be paid to our said Lady the Queen, her heirs or successors; to which payment well and truly to be made, we bind ourselves, and each of us by himself, for and in the whole, our heirs, executors and administra-

tors, and every of them, firmly by these presents. Sealed with our seals. Dated this day of , in the year of the reign of Her said Majesty, and in the year of our Lord one thousand eight hundred and .

Whereas on or about the day of , in the year of our Lord one thousand eight hundred and , (importer's name and residence), imported into the port of the undermentioned goods, namely:

which are now deposited in (one, two or more, as the case may be) warehouse, situate at , in the said port of , pursuant to law.

And whereas the said (importer) has lately sold and disposed of (the description and quality of goods sold. If the whole, the words "the said goods," must be inserted; "a part of the goods so imported by the said as aforesaid," must be struck through), a part of the goods so imported by the said , as aforesaid, unto the above bounden (the purchaser).

Now, the condition of this obligation is such, that if all the goods so imported shall be either duly exported or the full duties due and payable on the importation of such goods, or on such part thereof as shall not have been exported as aforesaid, be paid to the Receiver General, or other proper officer at the said port of , according to the first account taken of such goods upon the landing of the same, and if no part thereof shall be taken out of such warehouse until cleared from thence, upon due entry and payment of duty, (if intended for home consumption); and if the whole of such goods shall be so cleared from such warehouse, and the duties upon any deficiency of quantity, according to such first account, shall be paid within two years from the date of the first entry thereof, then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed and delivered, [L. S.]
in the presence of [L. S.]
[L. S.]

## H.

BOND TO BE GIVEN UPON THE REMOVAL OF WAREHOUSED GOODS FROM A WAREHOUSING PORT TO ANY PORT OF ENTRY WITHIN THIS COLONY.

Know all men by these presents, we (importer and two sureties) are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, in the sum of (treble the amount of the duties to be set down in words, and not in figures), of good and lawful money of Great Britain, to be paid to our said Lady the Queen, her heirs or successors; to which payment well and truly to be made we bind ourselves, and each of

us by himself, for and in the whole, our heirs, executors and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this day of , in the year of the reign of Her said Majesty, and in the year of our Lord one thousand eight hundred and .

Whereas the above bounden (importer) has given notice of his intention to remove to the port of the following goods, that is to say :

which said goods are now lodged and deposited in a warehouse situate at .

Now, the condition of this obligation is such, that if the said goods, and every part thereof, shall be duly delivered without alteration or diminution, into the custody and possession of the Sub-Collector, or other proper officer, at , aforesaid, and if the same goods, and every part thereof, shall be duly re-warehoused, or entered for duty at the said port of within the space of days next following the date hereof, the above bounden shall produce to the or other proper officer at , aforesaid, a certificate under the hand of the at , aforesaid stating that the whole and every portion of the said goods have been there landed and re-warehoused, or entered for duty ; then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed and delivered, [L. S.]
in the presence of [L. S.]
[L. S.]

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## I.

BOND TO BE GIVEN UPON ENTRY OF GOODS TO BE EXPORTED FROM THE WAREHOUSE.

Know all men by these presents, we (importer and two sureties) are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, in the sum of (treble the amount of the duties to be set down in words, and not in figures), of good and lawful money of Great Britain, to be paid to our said Lady the Queen, her heirs or successors ; to which payment well and truly to be made we bind ourselves, and each of us by himself, for and in the whole, our heirs, executors and administrators, and every of them, firmly by these presents Sealed with our seals. Dated this day of , in the year of the reign of Her said Majesty, and in the year of our Lord one thousand eight hundred and .

Whereas the above bounden has given notice of his intention to export to , in the ship or vessel , the following goods, that is to say :

which said goods are now deposited in warehouse, situate at in the port of

Now, the condition of this obligation is such, that if the said goods, and every part thereof, shall be duly shipped on board the said ship or vessel, and within the space of next following the date hereof, shall be duly landed at , aforesaid, entered and landed, without alteration or diminution at the port of , aforesaid, and within the space of days; and if, within the space of from the date hereof, the above bounden shall produce to the , or other proper officer, at , a certificate under the hand of the , stating that the whole, and every portion of the said goods, have been landed at , aforesaid; then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed and delivered, [L. S.]
in the presence of [L. S.]
[L. S.]

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# CHAPTER 9.

## Of Light Dues and Light Houses.


SECTION
1.—Light dues.
2.—No greater sum than $115 shall be levied in any one year.
3.—Receiver General to appoint persons in the outports to receive dues.
4.—Recovery of dues.
5.—Vessels not to be admitted to entry until light dues paid.
6.—Application of money.
7.—Appropriation of surplus of light-house fund.
8.—Signal guns, bells or gongs.
SECTION
9.—Tonnage dues for foreign vessels.
10.—Expenses of surveys of such vessels.
11.—Officers may board vessels and bring them into port.
12.—Buildings obstructing lights; prohibition as to erecting.
13.—Penalty for erecting; recovery.
14.—Such buildings may be removed; recovery of cost of removing.
15.—Compensation to owner, &c.; ascertaining amount of.


1. A duty or rate of twenty-four cents per ton shall be levied and paid upon every merchant ship or vessel, according to its registered tonnage, which may enter any port or place within this colony, other than coasting, sealing or fishing vessels registered in this colony, said duty to be levied once in each year And there shall be levied and paid upon every registered decked vessel of forty tons and upwards, registered in this colony, employed in the sealing, fishing or coasting trade of this colony or Labrador, and which may enter at or clear from any of the ports or places aforesaid, the duty or rate of twelve cents per ton, to be paid once in each year, and upon every such vessel of less than forty tons the sum of three dollars and forty-six cents per annum; and should any of the above-mentioned class of vessels engaged in the said fisheries, pay-

ing the duty of twelve cents per ton herein imposed, proceed on a foreign voyage, such vessel shall not be liable to any further rate than the said twelve cents per ton in any one year during which such vessel shall have been engaged in the said fisheries.

**2.** No greater sum than one hundred and fifteen dollars shall be levied in any one year for light dues on any steamer or vessel entering any port of this colony; and no steamer plying between Europe and North America, and on her said voyages entering any port of this colony as a port of call, shall be liable to pay any light dues.

**3.** The Receiver General may appoint the several sub-collectors within the colony, or some other fit persons in such ports where no such sub-collector shall reside, to demand, recover and receive the said duties and rates imposed by this chapter; and the moneys raised and levied under the provisions hereof shall by such person be paid over quarterly to the said Receiver General, and there shall be allowed to such persons so appointed in the outports a commission of five dollars per centum upon the amounts collected by them respectively.

**4.** On the non-payment by the master or any person having charge of, or any owner of any ship or vessel, of any rate or duty payable or incurred under this chapter, such rate or duty shall and may be sued for and recovered in a summary manner, in the name of the Receiver General or other person authorized to receive the same, before any one or more justice or justices within the district where the Receiver General or such other person so authorized may reside, together with all costs incurred, and shall be levied by warrant and distress of such justice or justices on the goods and chattels of the owner or of the master or other person in charge of the respective ship or vessel on account of which the said rate or duties shall respectively be payable.

**5.** Neither the Receiver General nor any sub-collector or other officer of customs shall admit to entry any ship or vessel subject and liable to the payment of any such rates or duties until the said rates and duties shall be paid to the person authorized to receive the same, or grant a clearance to any coasting, sealing or fishing vessel, within the description hereinbefore set forth, until the several rates and duties aforesaid shall be paid to the person authorized to receive the same.

**6.** All moneys which shall be received under this chapter shall be applied to the support of the several lighthouses in this colony. And any surplus light money which may remain after providing for the above purposes, shall be kept separate from the ordinary revenue of the colony.

**7.** The Governor in Council may appropriate such sum of money as shall remain in the hands of the Receiver General from time to time unexpended out of the light dues received by him, after defraying the costs

of maintaining existing lighthouses, towards the erection and maintenance of such lighthouses as may be authorized by the Legislature.

**8.** The Governor in Council may establish signal guns, bells or gongs in the several lighthouse establishments, for the safety of shipping.

**9.** All tonnage dues upon foreign vessels shall be assimilated to and in conformity with the tonnage dues of British vessels; and such foreign vessels shall be measured according to rules specified in an Act of the Imperial Parliament, passed in the seventeenth and eighteenth years of the reign of Her present Majesty, known as the "Merchants' Shipping Act, 1854."

**10.** When there is an increase of tonnage dues arising from such measurement, the expense of the measuring surveyor shall be borne by the Government of this colony, but when otherwise, by the owner or master of such vessel.

**11.** Any officer duly appointed by law for the collection of light dues, may go on board any vessel engaged in fishing or trading operations, and being within three miles of any part of the coasts of this colony or its dependencies, and stay on board while she remains in port or within such distance, and may, in addition to the powers and procedure prescribed in section four of this chapter, bring into port and detain such vessel until payment or satisfaction of all light dues by law recoverable.

**12.** No building or erection shall be built or placed in such position as to obstruct or interfere in any manner whatever with the light exhibited in any light-house or beacon, or with the leading lights exhibited as guides to vessels entering the harbor of St John's.

**13.** Any person acting in contravention of the provisions of the preceding section shall be liable to a penalty not exceeding forty dollars, to be recovered in a summary manner by the order and adjudication of a Justice of the Peace; and such penalty, with costs, may be levied by distress and sale of the goods and chattels of the offender by warrant under the hand of such Justice, or the said offender may be committed to prison for a period not exceeding three months.

**14.** Any building or erection, contrary to the provisions of this chapter, may be immediately removed by the Inspector of light houses, and he may recover the cost of such removal, with costs of suit, in a summary suit for the same before any Justice of the Peace from any person so building or erecting such building or erection.

**15.** For the purpose of ascertaining the damage which may be occasioned to any person whose interests in any lands, houses, buildings, or other property, may be affected by carrying out or enforcing the provisions

of this chapter, and providing compensation therefor, the same proceedings and remedies shall be had as are prescribed by section 163 of "The Saint John's Municipal Act, 1892," so far as the same shall be applicable; and any compensation which may be awarded to such persons shall be paid out of the light-house fund.

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## CHAPTER 10.

### Of Outstanding Debentures.

All outstanding debentures of the colony shall be assignable and transferable in the mode, and the principal and interest thereof respectively shall be payable at the times and in the manner prescribed in and by the said several debentures. And in case any such debentures do not prescribe the mode of transfer or assignment, the principal and interest shall be payable to the endorsee or assignee thereof: Provided that in case of debentures issued without limit of time for repayment, or forming part of the consolidated debt of the colony, the same may be called in and paid off at any time after the Government shall have given twelve months notice in the *Royal Gazette*, of its intention to redeem the same; and interest on such debentures shall cease at the time specified in such notice.

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## CHAPTER 11.

### Of Loans upon the Credit of the Colony issued in the United Kingdom.

SECTION
1.—Loans to be raised in the United Kingdom.
2.—If loans raised in the United Kingdom, Agents to be appointed.
3.—Loans, if in debentures, how issued.
4.—Loans, if in stock, to be issued in accordance with "The Colonial Stock Act."
5.—Bank in London shall be registrar of this colony in accordance with provisions of "Colonial Stock Act," for certain purposes.

**1.** Whenever under any future Act of the Legislature the Receiver General or any other person shall be authorized to raise a loan on the credit of the colony, unless otherwise provided, he may, if deemed desirable and with the sanction of the Governor in Council, raise such loans in sterling money in the United Kingdom of Great Britain and Ireland, the

sterling amount of such loans to be calculated at the exchange of four dollars and eighty cents per pound sterling, in accordance with chapter 101 of these Consolidated Statutes, entitled "Of the Currency."

**2.** In the event of its being deemed advisable to offer the said loans in sterling money in the United Kingdom of Great Britain and Ireland, the Governor in Council shall appoint an agent or agents to raise such loans in the United Kingdom either by debentures or as stock.

**3.** The loans, if issued in the United Kingdom by debenture, shall be so issued in debentures of such amounts, in sterling, each, in such proportions and in such terms consistent with the provisions of the Acts authorizing the loans respectively, as may be decided by the agent or agents appointed by the Governor in Council, and the interest on the debentures shall be payable half-yearly by coupons and the principal money repayable at maturity at the banking agents in London appointed by the Government of Newfoundland.

**4.** The loans, if issued in stock in the United Kingdom, shall be so issued in accordance with the Act of the Imperial Parliament of the United Kingdom of Great Britain and Ireland, called 'The Colonial Stock Act, 1877," 40 and 41 Victoria, chap. 59; and the Governor in Council shall, under the seal of the colony, authorize some person in the United Kingdom to make the declaration respecting such stock required by the first section of the said "Colonial Stock Act, 1877."

**5.** In the event of the loans being so issued as stock, the Governor in Council shall enter into an agreement with some bank in London, providing for such bank acting as registrar of the colony of Newfoundland in London, in accordance with the provisions of the "Colonial Stock Act, 1877," and for all or any of the following purposes, viz.:—

(1.) For inscribing stock in the books of such bank.

(2.) For managing the creation, inscription and issue of stock

(3.) For effecting the conversion of debentures into stock and managing transfers of stock.

(4.) For paying dividends on stock.

(5.) For issuing stock certificates to bearer, and, as often as occasion shall require, reissuing or reinscribing stock and reissuing stock certificates.

(6.) Generally conducting all business connected with stock; and

(7.) For the protection and remuneration of such bank under and in respect of any such agreement.

# CHAPTER 12.

## Of the Salaries of Certain Officers.

SECTION
1.—Salaries of certain officers.
SECTION
2.—Salaries payable quarterly, by warrant.
3.—Salaries to be in full payment of all services.

1. The following yearly salaries and allowances shall be paid to the undermentioned officers:—

The Governor of this colony and its dependencies, the sum of twelve thousand dollars.

The Chief Justice of the Supreme Court, the sum of five thousand dollars.

Each of the other Judges of the said Court, the sum of four thousand dollars.

The Colonial Secretary and Clerk of the Council, the sum of two thousand four hundred dollars.

The Receiver General, the sum of two thousand four hundred dollars.

The Attorney General, the sum of two thousand four hundred dollars.

The Solicitor General, the sum of one thousand two hundred dollars.

The Surveyor General, the sum of two thousand four hundred dollars.

The Financial Secretary, the sum of one thousand six hundred and sixteen dollars.

The Sheriff of the Central District, the sum of one thousand three hundred and eighty-five dollars.

The Sheriff of the Northern District, the sum of one thousand three hundred and eighty-five dollars.

The Sheriff of the Southern District, the sum of nine hundred and twenty-four dollars.

The Postmaster General, the sum of two thousand two hundred dollars.

The Chairman of the Board of Works, the sum of two thousand dollars.

Each of the Judges of the Central District Court, the sum of two thousand two hundred dollars.

The Judge of the Harbor Grace District Court, the sum of two thousand and fifty dollars.

**2**. The said salaries shall be paid quarterly by warrant of the Governor, on the Receiver General.

**3**. The salaries of the said offices, except that of the Colonial Secretary, shall be in full payment of the services of the incumbents thereof, and in lieu of all fees of office and perquisites whatsoever: Provided, that all fees by law recoverable in the said respective offices, except in that of the Colonial Secretary, shall be paid to the Receiver General, for the use of the colony. The Colonial Secretary shall not be entitled to any fee on the issue of crown grants of land.

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# CHAPTER 13.

## Of Crown Lands, Timber, Mines and Minerals.


SECTION
1.—Construction of terms.
2.—Crown lands' office.
3.—Copies of records to be evidence.
4.—Employees in office not to hold Crown lands.
5.—System of survey; townships.
6.—Description of boundary lines.
7.—Townships—how numbered and arranged.
8.—Width of township.
9.—Sub-division of township.
10.—Posts to be placed at corners of townships.
11.—Extent of sub-divisions of sections.
12.—Unappropriated Crown lands to be open for purchase; conditions of grant; proviso; exception.
13.—Grant in fee not exceeding twenty acres, at not less than thirty cents per acre.
14.—Land including a water-power, harbor, &c., to be reserved from ordinary sale.
15.—Licenses of occupation from 160 to 6,400 acres; conditions; right to grant in fee
16.—Licenses of occupation of 5,000 acres; grant in fee on performance of conditions; reservations.
17.—Licenses of occupation not exceeding fifty acres.
18.—Lease of right to use water of pond or river; proviso.
19.—Lease of pond or river and land for breeding of fish.
20.—Lands may be set apart for towns, &c.
21.—Lands may be set apart for sites of public buildings, &c.
22.—Reservation of shelter for stock.
SECTION
23.—Reservation of margin of lakes and ponds and banks of rivers.
24.—Homestead; location ticket; form of application.
25.—Conditions precedent to grant in fee for homestead.
26.—Provision in cases of meritorious improvements before the passing of the Act 47 Vic., cap. 2
27.—Forfeiture of location ticket in certain cases.
28.—Holder of location ticket for homestead may have license of occupation of adjoining 160 acres, and subsequently a grant thereof.
29.—No grant before three years after date of location ticket.
30.—Grant may issue three years after location ticket; proviso.
31.—Sales for benefit of infants in certain cases.
32.—Provisions for settlement of immigrants in communities.
33.—Title of lands to be in Crown till issue of grant.
34.—Grant may be obtained before three years on certain terms.
35.—Forfeiture of land by absence of settler.
36.—Surveyor General may order inspection of homestead.
37.—Land under cancelled location ticket to be sold.
38.—Assignments of homesteads before issue of grant, null and void; exception.
39.—Rights of holder of location ticket.

SECTION
40.—Homestead provisions of this chapter not to affect chapter 78.
41.—Rights of Surveyor.
42.—Punishment of persons interfering with Surveyor, or removing, &c., posts or monuments.
43.—Provision in case of false survey or error in plans, &c.; limitation of claim.
44.—Provision in case of inconsistent grants, licenses, &c.; limitation of claim.
45.—Grant, lease, &c., containing wrong name, &c., may be cancelled and another issued.
46.—Holder of grants, &c., to keep up corner posts and boundary lines.
47.—Commons for pasturage; rules, &c., respecting same.
48.—Forest lands may be set apart.
49.—Construction of term "timber."
50.—Bonus for right to cut timber.
51.—Licenses may be issued to cut timber; conditions of same.
52.—Interest to run on unpaid royalty; Surveyor General, for non-payment of royalty, &c., may seize and sell timber cut.
53.—All timber cut to be liable for unpaid dues.
54.—No timber to be cut without license; penalty; burden of proof.
55.—Grant, &c., not to convey certain slides, booms, &c., constructed before grant, &c.
56.—Grant, &c., not to affect free use of streams, &c., for floating timber or of passing over land on either side of such streams, &c.
57.—Boundaries of timber limits to be cut three feet wide.
58.—Prevention of saw-dust, refuse from saw-mills, &c., from getting into waters of rivers, &c.
59.—Licenses to cut timber for pulp-manufacturing; conditions, &c.

SECTION
60.—Where mineral grants or leases not issued for want of survey, notice to be served; persons served shall, within 12 months, survey the lands and file survey in Surveyor General's office; otherwise forfeiture.
61.—Any person may search for minerals on any lands without license, but may not remove mineral.
62.—Search not to constitute exclusive right.
63.—On discovery of a vein, &c., person desiring lease may secure a "mining location"; notice of staking; payment of fee; whereupon lease to issue.
64.—Provision in case of simultaneous search by several persons.
65.—Licenses for gold.
66.—Term of mining lease, five years; to include fifty acres surface land; lessee to expend a certain sum each year; other conditions.
67.—Mining lease not to interfere with grant of surface, except as to fifty acres.
68.—Right of way.
1. Arbitration.
2. Mode of estimating value.
69.—Compensation for damage to private property.
70.—Grants in fee.
71.—Applications to be by petition.
72.—Fees.
73.—Agents of Government access to mines.
1. Books of account.
74.—Recovery by Surveyor General of lands forfeited or unlawfully held.
75.—Reservation of Crown lands, &c., for public purposes.
76.—Rules, &c., as to forms; publication.
77.—Application without fee invalid.
78.—Returns.
79.—This chapter not to affect existing rights.

**1.** This chapter shall apply to all ungranted and unoccupied lands within the Island of Newfoundland and its dependencies, and the following terms and expressions herein shall be held to have the meaning hereinafter assigned to them—

(1.) The term "Surveyor General" means the head of the Crown Lands' Office.

(2.) The term "Surveyor," or "Land Surveyor," means a surveyor authorized by the Surveyor General to survey Crown lands.

(3.) The term "Belt," as used in connection with timber, means a strip of timber along the shore of a lake, river, or watercourse.

(4.) The term "Royal Gazette" means the official Gazette of the Government, published at St. John's.

**2.** The department of the Surveyor General shall be charged with the administration and management of the Crown lands.

**3.** Copies of any records, documents, plans, books or papers, belonging to or deposited in the said office, attested under the signature of the Surveyor General, shall be competent evidence in all cases in which the original records, documents, books, plans or papers, would be evidence.

**4.** No person employed in the department or holding an office created by or continued under this chapter shall purchase any such lands, except under authority of an order of the Governor in Council.

### System of Survey.

**5.** Subject always to the provisions hereinafter made with respect to special cases—

(1.) The Crown lands shall, as far as practicable, be laid off in quadrilateral townships, containing thirty-six sections of one mile square each (except in the case of those sections rendered irregular by the convergence or divergence of meridians as hereinafter mentioned) together with road allowances of one chain and fifty links in width between all townships and sections.

(2.) The sections shall be bounded and numbered as shown by the following diagram:—

| | | | | | |
|---|---|---|---|---|---|
| 31 | 32 | 33 | 34 | 35 | 36 |
| 30 | 29 | 28 | 27 | 26 | 25 |
| 19 | 20 | 21 | 22 | 23 | 24 |
| 18 | 17 | 16 | 15 | 14 | 13 |
| 7 | 8 | 9 | 10 | 11 | 12 |
| 6 | 5 | 4 | 3 | 2 | 1 |

(3.) The townships therefore, will, subject to deficiency or surplus from converging or diverging meridians, as the case may be, measure on each side, from centre to centre of the road allowance bounding the same, four hundred and eighty-nine chains: Provided that the Governor in Council may hereafter, should the same be deemed expedient, reduce the width of the road allowances on townships.

**6.** The lines bounding townships on the east and west sides shall, in all cases, be true meridians, and those on the north and south sides shall

be chords intersecting circles of latitude passing through the angles of the townships.

**7.** The townships shall be numbered in regular order, northerly and southerly from the forty-ninth parallel of latitude, and shall lie in ranges numbered, east and west, from the fifty-sixth meridian of longitude. Such other governing or guide meridians may be adopted and confirmed by the Governor in Council as may from time to time become expedient.

**8.** The townships shall be laid out the width of four hundred and eighty-nine chains, as aforesaid, and the meridians between townships shall be drawn from the base lines, north or south, to the depth of two townships that is to the correction lines.

**9.** Each section shall be divided into quarter sections of one hundred and sixty acres more or less.

**10.** Only a single row of posts or monuments, to indicate the corners of townships or sections, (except as hereinafter provided), shall be placed on any survey line. These posts or monuments as an invariable rule (with the exceptions above referred to) shall be placed in the west limit of the road allowances on north and south lines, and in the south limit of road allowances on east and west lines, and in all cases shall fix and govern the position of the boundary corner between two adjoining townships, sections, or quarter sections, on the opposite sides of the road allowances: Provided, that in the case of the township sections, and quarter sections, courses on correction lines, posts or monuments shall in all cases be planted and marked independently for the townships on either side, those for the townships north of the line in the north limit of the road allowances, and those for the townships south in the south limit.

**11.** Legal sub-divisions, as applicable to the survey, sale, and granting of Crown lands, shall be as follows, and it shall be sufficient that such legal sub-divisions be severally, as the case may require, designated and described by such names or numbers and acres for letters patent or grants, that is to say:—

(1.) A section, or six hundred and forty acres.
A half section, or three hundred and twenty acres.
A quarter section, or one hundred and sixty acres.
A half-quarter section, or eighty acres.
A quarter-quarter section, or forty acres.

(2) To facilitate the descriptions for letters patent or grants of less than a half-quarter section the quarter sections composing every section in accordance with the boundaries of the same as planted or placed in the original survey, may be divided into quarter-quarter sections, or forty acres, and such quarter-

quarter sections shall be numbered as shewn in the following diagram, which is intended to shew the proposed sub-division of a section:—

| | | | |
|---|---|---|---|
| 13 | 14 | 15 | 16 |
| 12 | 11 | 10 | 9 |
| 5 | 6 | 7 | 8 |
| 4 | 3 | 2 | 1 |

(3.) The area of any legal sub-division as above set forth, shall, in letters patent or grants, be held to be more or less, and shall in each case be represented by the exact quantity as given to such sub-division in the original survey.

(4.) Nothing in this chapter shall be construed to prevent fractional sections, or lands bordering on any river, lake, or other water-course, or public road, from being divided, or such lands from being laid out in lots of any certain frontage and depth in such a manner as may appear desirable.

ORDINARY PURCHASE AND SALE OF LANDS.

**12.** Unappropriated Crown lands, the surveys of which have been duly made, shall, except as hereinafter provided, be open for purchase in entire sub-divisions of sections as hereinbefore defined, or in lots, as the case may be, at an upset price to be fixed by the Governor in Council, according to the location and value of such lands, the upset price in no case to be less than thirty cents per acre. Every such grant shall be upon the condition that the grantee shall, within five years from the date of the grant *bona fide* clear and cultivate ten acres for every one hundred acres comprised in the grant, and in the same proportion, for any less quantity: Provided that, except in special cases where otherwise ordered by the Governor in Council, no grant of more than a section, or six hundred and forty acres, shall be made to one person; and provided also, that such unoccupied lands as may, from time to time, be deemed advisable by the Governor in Council, may be withdrawn from ordinary sale and settlement and sold by public auction to the highest bidder, an upset price being fixed upon said lands.

**13.** The Governor in Council may issue grants in fee not exceeding twenty acres in any one grant of unappropriated Crown land not included in township surveys to any persons making applications therefor, at a cost of not less than thirty cents per acre, the land applied for having been in every case surveyed by a surveyor at the cost of the applicant and reported upon by the surveyor in favor of the applicant.

**14.** Any legal sub-division or other portion of unappropriated Crown land which may include a water-power, harbor, or stone-quarry, shall be reserved from ordinary sale, to be disposed of in such manner and on such terms and conditions as may be fixed by the Governor in Council on the report of the Surveyor General, after it shall have been advertised in the *Royal Gazette* for a period of not less than one month.

**15.** The Governor in Council may issue licenses of occupation of unappropriated Crown land, on payment of a fee of five dollars for each one hundred and sixty acres, for not less than one hundred and sixty acres, nor more than six thousand, four hundred acres, subject to the condition that the licensee shall, within two years settle upon the land one family for each one hundred and sixty acres and for a period of five years cause to be cleared at least two acres per year for every hundred acres so licensed, and continue the same under cultivation and continue the same families thereon, or others in lieu thereof, for a period of ten years from the expiration of the said five years; upon the performance of which conditions the licensee shall be entitled to a grant in fee of the said land.

**16.** The Governor in Council shall have power to issue licenses of occupation of areas of unappropriated Crown lands of five thousand acres, which licenses shall entitle the holder to grants in fee, upon the performance of such terms and conditions as the Governor in Council shall deem fit to provide, to secure the settlement upon, and cultivation of the land. In all such licenses of occupation and grants, such reservation shall be made as may be necessary for the preservation of the sea shore for the fishery and for all other public purposes. Such terms and conditions shall, in all cases, comprise the following, namely: that the holder of the license shall, within two years from the date of the license, clear and have ready for crop at least one per cent. of the area comprised in the license; within three years, two per cent.; within four years, four per cent.; within five years, seven per cent.; within six years, ten per cent; within seven years, thirteen per cent.; within eight years, sixteen per cent; within nine years, twenty per cent.; and within ten years, twenty-five per cent.; and shall settle upon the land at least one family for every three hundred and twenty acres.

**17.** The Governor in Council may issue licenses of occupation, in quantities not exceeding fifty acres, of any unappropriated lands, for a term not exceeding five years, to such persons as shall be desirous of permanently settling on and cultivating the same. To such persons as shall have *bona fide* actually and continuously occupied and resided on the land so licensed for a period of five years from the date of the license, and shall have cultivated within that period two acres of the said land, the Governor in Council may issue grants in fee for the quantity of land specified in the license.

**18.** The Governor in Council, after one month's notice in the *Royal Gazette*, may lease for a term of years the right to use the waters of any

pond or river for the purpose of driving machinery, subject to such rent and conditions as may be deemed expedient: Provided always, that in no case shall the water in such pond or river be reduced by the said lessee below average summer level, nor shall any noxious or deleterious substance or any saw-dust or refuse of saw-mills be introduced into such ponds or rivers, whereby fish may be injured or the waters discolored or rendered unfit for drinking or other purposes; and the vested rights, if any, of all persons holding lands whose interests may be affected by the use of the water, shall be reserved in such lease. Any person violating the provisions of this section shall be liable to a fine of one hundred dollars for every offence, to be recovered in a summary manner before any stipendiary Magistrate.

**19.** The Governor in Council may, for the purpose of encouraging the breeding of fish in this colony, after one months' notice in the *Royal Gazette*, lease for a term of years the right to use any pond or river, and such quantity of land adjoining the same as may be necessary for such purposes, subject to such terms and conditions as may be deemed necessary.

**20.** The Governor in Council shall have power from time to time to set apart and withdraw from purchase and from the homestead clauses of this chapter, any tract or tracts of land which it may be considered by him expedient to lay out for towns or villages, and to cause the same to be surveyed and laid out, and the lots so laid out to be sold, after one months' notice in the *Royal Gazette*, either by private sale, and for such price as he may see fit, or at public auction.

**21.** The Governor in Council may also set apart and appropriate such Crown lands as may be deemed expedient for the sites of market places, public buildings, gaols, court houses, places of public worship, cemeteries, schools, benevolent institutions, squares, parks and other like public purposes, and also any bog lands, beaches or shores for general and public use, and, at any time before the issue of grants, leases or patents therefor, may alter or revoke such appropriations as he deems expedient, and may make free grants for the purposes aforesaid of the lands so appropriated, the trusts and uses to which they are to be subject being expressed in the patents, leases or grants.

**22.** It shall be a condition of any grant, lease, license and location ticket under this chapter, that the holder thereof shall preserve at least five per cent. of all trees or wooded lands as shelter for stock; and in cases where there are no trees, the grantee, lessee or licensee, or holder of location ticket, shall plant and cultivate, or cause to be planted and cultivated, twenty trees every year for ten years for every acre contained in his grant, lease, license or location ticket.

**23.** In all grants, leases, licenses and location tickets, there shall be reserved for public use a width of not less than twenty-five feet and not

exceeding one hundred feet round and adjoining all lakes and ponds and on both banks of all rivers In special cases where the land immediately adjoining any pond, lake or river is required to be used or occupied for a building or for other purposes, the Governor in Council may permit such use or occupation upon condition of such other or substituted reservation out of the grant, lease, license or location ticket, as may be necessary for public use.

HOMESTEAD RIGHTS.

**24.** Any person who is sole head of a family, or any male who has attained the age of eighteen years, may, upon payment of a fee of ten dollars, obtain a location ticket for any quantity not exceeding one hundred and sixty acres of such unappropriated Crown lands as shall be set apart by the Governor in Council for the purpose of securing a homestead right. The application shall be in the form prescribed by schedule A or schedule A 1 to this chapter, and the location ticket in the form prescribed by schedule B to this chapter.

**25.** To secure a grant in fee for a homestead the person claiming such homestead right must—

(1.) Commence clearing and improving on the lot assigned him within six months after the date of his location ticket.

(2.) Build thereon within two years from such date a house fit for habitation, of not less dimensions than twenty feet by sixteen, and clear and cultivate not less than three acres by sowing or planting the same.

(3.) Cultivate and clear not less than six acres within three years from such date and each year actually and continuously cultivate all the land cleared during such three years.

(4.) Reside actually and continuously upon such land for the term of three years next succeeding such date and thence up to the issue of the grant.

**26.** In cases where any person shall have entered upon Crown lands previous to the passing of the Act 47 Victoria, chapter two, and made thereon meritorious improvements, which amount to a compliance with the foregoing conditions, the Governor in Council may, upon satisfactory evidence of such improvements having been made, grant in fee to such persons, for a homestead, land not exceeding one hundred and sixty acres upon payment of a fee of five dollars.

**27.** On failure of the performance of any of the settlement conditions and duties, provided by the twenty-fifth section, the location ticket shall be forfeited, and the land shall revert to and vest in the Crown, with all the improvements thereon, as fully as if no location ticket had been issued.

**28.** A person holding a location ticket for a homestead right shall be entitled, on payment of a fee of ten dollars, to receive at the same time therewith a license to occupy an adjoining one hundred and sixty acres or less quantity of Crown land then unclaimed, and at the expiration of the period of three years or upon the sooner obtaining a grant for the homestead under the thirty-fourth section of this chapter, he shall be entitled to a grant of the said land so licensed, at the Government price of thirty cents per acre; but the right to claim such grant shall cease and be forfeited, together with all improvements on such land, upon any forfeiture of the location ticket or homestead right under this chapter.

**29.** No grant shall be issued for the land held under location ticket until the expiration of three years from the date thereof, except as hereinafter provided.

**30.** At the expiration of three years the holder of a location ticket, his devisees or next of kin, shall be entitled to a grant of the land upon proof to the satisfaction of the Governor in Council, that he or they have resided upon and cultivated the land for the three years next after the date of the location ticket.

**31.** When both parents die without having devised the land, leaving a child or children under age, it shall be lawful for the executors or administrators, (if any,) of the last surviving parent, or the guardian or guardians of such child or children, with the approval of a Judge of the Supreme Court, to sell the lands for the benefit of the infant or infants, but for no other purpose, and the purchaser in such case shall receive a grant for the land so purchased.

**32.** In the case of settlements being formed of immigrants in communities, the Governor in Council, in his discretion, may vary or waive altogether the foregoing requirements as to the residence and cultivation on each separate quarter section held under location ticket as a homestead, and when a certain number of homestead settlers, other than immigrants, embracing not less than twenty families, with a view to greater convenience in the establishment of schools, churches, or other useful public purposes, ask to be allowed to settle together in a hamlet or village, the Governor in Council may, in his discretion, vary the foregoing requirements as to residence, but not as to the cultivation of each separate quarter section as a homestead.

**33.** The title to lands shall remain in the Crown until the issue of the grant therefor, and such lands shall not be liable to be taken in execution before the issue of the grant.

**34.** Any person who has availed himself of the foregoing provisions may, before the expiration of the three years, obtain a grant for the land held by him, on paying the Government price therefor at the date of the

location ticket and making proof of settlement and cultivation for not less than twelve months from the said date.

(1.) Proof of such actual settlement and cultivation shall be made by affidavit of the claimant and two witnesses, made before a commissioner of affidavits or a justice of the peace and furnished to the Surveyor General.

**35**. In case it is proved to the satisfaction of the Governor in Council that the settler has voluntarily relinquished his claim or has been absent from the land entered by him without leave of absence from the Surveyor General, for more than six months continuously in any one year, then the right to that land shall be liable to forfeiture and may be cancelled by the Governor in Council, and the settler so relinquishing, abandoning or forfeiting his claim shall not be permitted to obtain more than a second location ticket.

**36**. The Surveyor General may at any time order an inspection of any homestead in reference to which there may be reason to believe the foregoing provisions as regards settlement and cultivation have not been or are not being carried out, and may, on a report of the facts, cancel the location ticket of such homestead.

**37**. In the case of a cancelled location ticket for a homestead, with or without improvements thereon, the land shall not be considered as of right open to fresh location ticket but may be sold or otherwise disposed of as the Governor in Council may direct.

**38**. All assignments and transfers of homestead rights before the issue of the grant, except as hereinafter mentioned, shall be null and void, but shall be deemed evidence of the abandonment of the right, and the person so assigning or transferring shall not be permitted to obtain a second location ticket; provided that a person who shall have become entitled to a grant in fee for a homestead may legally dispose of and convey, assign or transfer his right and title therein.

**39**. Any person who may have obtained a homestead location ticket shall be considered, unless and until such ticket be cancelled, as having an exclusive right to the land described in the said ticket as against any other person or persons whomsoever, and may bring and maintain actions for trespass committed on the said lands or any part thereof.

**40**. Nothing in this chapter contained having reference to homesteads or homestead rights shall be held to apply to or affect the provisions of chapter 78 of these Consolidated Statutes, entitled "Of Estates of Homestead."

PROTECTION OF SURVEYORS AND SURVEYS.

**41**. Any authorized land surveyor, when engaged in the performance of his duties as such, may pass over, measure along and ascertain the bear-

ings of any township or section line or other Government line, and for such purposes may pass over the lands of any person whomsoever, doing no actual damage to the property of such person.

**42.** Any person who shall interrupt, molest or hinder a surveyor while in discharge of his duty, or shall knowingly and wilfully pull down, deface, alter or remove any mound, post or monument erected, planted or placed in any survey under the provisions of this chapter or under the authority of any Order in Council, shall, upon conviction in a summary manner before a stipendiary magistrate, be liable to punishment by fine not exceeding twenty-five dollars or imprisonment for a period not exceeding three months, without prejudice to any civil remedy which any surveyor or any other party may have against the offender.

### Correction of Grants.

**43.** Whenever, by reason of false survey or error in the books or plans in the Surveyor General's department, any grant, sale, or appropriation of land is found to be deficient, or any parcel of land contains less than the quantity of land mentioned in the grant therefor, the Governor in Council may order the purchase money of so much land as is deficient, or if the land has passed from the original purchaser, then the purchase money which the claimant (provided he was ignorant of a deficiency at the time of his purchase) has paid for so much of the land as is deficient, to be paid to him in land or in money, as he, the Governor in Council, may direct, or in case of a free grant he may order a grant of other land equal in value to the land so intended as a free grant at the time such grant was made; but no such claim shall be entertained unless application has been made within two years of the date of the grant, nor unless the deficiency is equal to one-tenth of the whole quantity described as being contained in the particular lot or parcel of land granted.

**44.** In all cases in which grants, licenses or location tickets have been issued for the same land, inconsistent with each other through error, and in all cases of sales or appropriations of the same land inconsistent with each other, the Governor in Council may, in cases of sale, cause a repayment of the purchase money, or when the land has passed from the original purchaser or has been improved before the discovery of the error, or where the original grant or appropriation was a free grant he may in substitution assign land or grant a certificate entitling the party to purchase Crown lands of such value and to such an extent as to him (the Governor in Council) may seem just and equitable under the circumstances; but no such claim shall be entertained unless it be preferred within one year from the discovery of the error.

**45.** Whenever a grant, lease, license or location ticket, has been issued to or in the name of a wrong party, or contains any clerical error, misnomer or wrong or defective description of the land thereby intended to be granted, or there is in such grant, lease, license or location ticket an omission of the

conditions of the grant, lease, license or location ticket, the Surveyor General, may (there being no adverse claim) direct the defective grant, lease, license or location ticket to be cancelled and a correct one to be issued in its stead, which corrected grant, lease, license or location ticket shall relate back to the date of the one so cancelled and have the same effect as if issued at the date of such cancelled grant, lease, license or location ticket.

### Boundary Lines.

**46**. All holders of grants, leases, licenses and location tickets shall at all times keep up good and substantial posts, mounds or monuments at all corners and angles of the land held by them, and shall keep the boundary lines through the woods connecting the said corners and angles open and clear to a width of at least three feet.

### Commons.

**47**. The Governor in Council shall have power to set apart such areas or tracts of unappropriated Crown lands as may be deemed necessary to be used as commons for pasturage, subject to such rules, regulations and conditions as may be prescribed by the Governor in Council. Such rules, regulations and conditions shall be published in the *Royal Gazette*, and shall have the force and effect of law as if the same were fully set forth in this chapter.

### Timber and Timber Lands.

**48**. Any tract of land covered by forest timber may be reserved and set apart by the Governor in Council as timber lands; such allotments to be subject to such reservations as are necessary for the purposes of the fishery.

**49**. In the enactments and provisions under the present heading, "Timber and Timber Lands," the word "timber" includes all lumber and all products of timber hereinafter mentioned, or of any other kind whatsoever, including firewood or bark: Provided always, that for the purpose of royalties imposed by this chapter the word "timber" shall include only the tree as cut down.

**50**. The right of cutting timber shall be at a bonus per square mile, varying according to the situation and value of the limit.

**51**. The Governor in Council may, after one month's notice in the *Royal Gazette*, grant licenses to cut timber on the ungranted Crown lands for a period not exceeding twenty-one years, and containing the following conditions, that is to say:—

(1) The lessee to erect a saw mill or mills in connection with such limit and lease, and subject to any special conditions which may be agreed upon and stated in the license or lease; such

mill or mills to be of capacity to cut at the rate of a thousand feet, board measure, in twenty-four hours, for every five square miles of limits on the license, or to establish such other manufactory of wood goods as may be agreed upon as the equivalent of such mill or mills, and the lessee to commence to work the limit in the manner and to the extent provided in the license within two years from the date thereof and during each succeeding year of the term: Provided that the lessee may, with the consent of the Governor in Council, make a greater or less quantity of lumber in any year than the quantity specified.

(2.) To take from every tree he cuts down all the timber fit for use, and manufacture the same into sawn lumber or such other saleable product as may be provided in the license or lease, or by any regulations made under this chapter.

(3.) To prevent all unnecessary destruction of growing timber on the part of his men, and to exercise strict and constant supervision to prevent the origin or spread of fires.

(4.) To make returns to the Government, quarterly, or at such periods as may be required by the Governor in Council, or by regulations under this chapter, sworn to by him or by his agent or employee, cognizant of the facts, declaring the quantities sold or disposed of as aforesaid, of all sawn lumber, timber, railway car stuff, ship timbers and knees, shingles, laths, cordwood, or bark; or any other product of timber from the limit, in whatever form the same may be sold or otherwise disposed of by him during such quarter or other period, and the price or value thereof.

(5.) To pay, in addition to the bonus, an annual ground rent of two dollars per square mile, and further, a royalty at the rate of fifty cents per one thousand feet board measure on the trees cut down.

(6.) To keep correct books of such kind and in such form as may be provided by his lease, or by regulations under this chapter, and to submit the same for the inspection of the Surveyor General whenever required, for the purpose of verifying his returns aforesaid.

(7.) The lease shall describe the lands upon which the timber may be cut, and shall vest in the lessee during its continuance the right to take and keep exclusive possession of the lands so described, subject to the conditions herein provided or referred to, and such lease shall vest in the holder thereof all right of property whatsoever in all trees and timber cut within the limits of the lease during the continuance thereof, whether such trees be cut by the authority of the holder of such lease

or by any other person, with or without his consent; and such lease shall entitle the lessee to seize, *in replevin revendication* or otherwise, as his property, such timber where the same is found in the possession of any unauthorized person, and also to bring any actions or suits at law or in equity against any party unlawfully in possession of any such timber or of any land so leased, and to prosecute all trespassers thereon, and other such offenders as aforesaid, to conviction and punishment, and to recover damages, if any, and all proceedings pending at the expiration of any such lease may be continued and completed as if the lease had not expired: Provided that such lease shall be subject to the right of the Governor in Council to deal with land from which timber has been cut and with all minerals which may be found in the land described therein.

(8.) Such lease shall be subject to forfeiture for infraction of any one of the conditions to which it is subject, or for any fraudulent return; and in such case the Governor in Council shall have the right, without any suit or other proceedings at law or in equity, or compensation to lessee, to cancel the same and to make a new lease or disposition of the limit described therein to any other party, at any time during the term of the lease so cancelled: Provided that the Governor in Council, if he sees fit, may refrain from cancelling such lease for non-payment of dues, and may enforce payment of such dues in the manner hereinafter provided.

**52.** Any ground rent, royalty, or other dues to the Crown on timber cut within any such limit, which are not paid at the time when they become due and payable, shall bear interest at the rate of six per cent per annum, until paid, and shall be a lien on any timber cut within such limits; and whenever the ground rent on any limit or any royalty or other dues to the Crown on any timber are unpaid, the Surveyor General may seize so much of the timber cut on such limit and in the possession of the lessee or on his premises, whether sold or unsold, as will, in his opinion, be sufficient to secure the payment of such rent, royalty and other dues, and all interest and expenses of seizure and sale, and may detain the same as security for the payment thereof, and if such payment be not made within three months of such seizure, the Surveyor General may sell such timber by public auction, and, after deducting the sum due to the Crown, the interest thereon and expenses aforesaid, he shall pay over the balance, if any, to the lessee or owner of the timber.

**53.** All timber cut under lease shall be liable for the payment of Crown dues thereon so long as, and wheresoever the said timber or any part of it may be found, whether it be or be not manufactured into deals, boards or any other products.

**54**. No person without license as aforesaid, shall cut, take or carry away from ungranted Crown lands any timber for exportation, either in logs or in lumber, under a penalty of twenty dollars for every tree, or one thousand feet of lumber so cut, taken or carried away, in addition to the value of the tree or lumber, to be sued for in the name of the Surveyor General before any stipendiary Magistrate; and in such suit it shall be incumbent upon the defendant to prove that such tree or lumber was not cut, taken or carried away in contravention of this chapter.

**55**. No license, grant or location ticket of any Crown land shall give or convey any right or title to any slide, dam, pier or boom, or other work, for the purpose of facilitating the descent of timber or sawn logs, previously constructed on such land, or in any stream passing through or along such land, unless it be expressly mentioned in the license, grant or location ticket that such slide, dam, pier or boom, or other work, is intended to be thereby sold or granted.

(1.) The free use of slides, dams, piers, booms or other works, on streams to facilitate the descent of lumber and sawn logs, and the right of access thereto for the purpose of using the same and keeping them in repair, shall not in any way be interrupted or obstructed by or in virtue of any license, grant or location ticket of Crown lands made subsequent to the construction of such work.

**56**. The free use, for the floating of saw logs and other timber, rafts and draws, of all streams and lakes that may be necessary for the descent of timber from said lands, and the right of access to such streams and lakes, and of passing and re-passing on or along the land on either side thereof and whenever necessary for such use thereof, and over all existing or necessary portage roads, past any rapids or fall, or connecting such streams or lakes, and over such roads, other than road allowances, as owing to natural obstacles may be necessary for the taking out of timber or sawn logs from said lands, and the right of constructing slides where necessary, shall continue uninterrupted and shall not be affected or obstructed by or in virtue of any license, grant or location ticket of such lands, or by or in virtue of any license to cut timber held by one person as against any other person holding a license for the same purpose.

**57**. The Surveyor General may cause all timber limits to be properly surveyed and the boundary lines of such limits to be cut to a width of three feet, the cost of such survey and of the cutting of such lines to be paid by the holder of the license; and where two or more licensees are interested in such survey and the cutting of such lines, the Surveyor General shall determine what portion of the costs thereof shall be paid by each, and such costs shall be paid upon the completion of the survey and the cutting of the lines.

**58**. The owner, proprietor or manager of every saw mill erected on or working near the margin of any of the public waters, bays, creeks or

harbours of this colony or its dependencies, shall take means to prevent the introduction into the said public waters, bays, creeks or harbours as aforesaid, of any noxious or deleterious substance, or any saw-dust, or any refuse of saw mills, under a penalty for every offence of one hundred dollars, to be recovered in a summary manner before any stipendiary Magistrate.

**59.** The Governor in Council may, after one month's notice in the *Royal Gazette*, grant licenses to cut timber on ungranted Crown lands in extent not less than five nor more than one hundred and fifty square miles, which shall be in one parcel or block, for the purpose of manufacturing paper or paper pulp, for a period not exceeding ninety-nine years, and containing the following conditions, and subject to any special conditions which may be agreed upon and stated in the license, that is to say:—

(1.) Before the issue of such license the licensee shall pay to the Surveyor General, for the use of the colony, a sum after the rate of twenty dollars for each square mile of land included in such license, and, at the end of the first twenty-five years of the said term, a further sum after the rate of twenty dollars for each square mile as aforesaid, and, at the end of the first fifty years, a further sum at the rate of twenty dollars for each square mile as aforesaid, and, at the end of the first seventy-five years, a further sum after the rate of twenty dollars for each square mile as aforesaid.

(2.) The licensee shall, within five years next after the date of such license, *bona fide* expend a sum of not less than at the rate of one thousand dollars for each and every square mile so licensed, in the erection of buildings and machinery necessary for the establishment of a factory or factories for the manufacture of paper pulp upon the said land so licensed, or within a distance of two miles therefrom, said expenditure to commence within two years from the date of such license and continue thereafter at not less than the rate of twenty-five per cent. per year of the whole sum.

(3.) The licensee shall satisfactorily prove to the Surveyor General, for the information of the Governor in Council, by the production of books or otherwise, as he, the licensee, may be required, that the said sum of money has been so expended in and about the erection of such buildings and machinery.

(4.) The licensee shall take from every tree cut by him on the said licensed land, all wood fit for use in the manufacture of paper or paper pulp, and shall so manufacture the same in the said factory or factories so to be erected by him.

(5.) The licensee shall prevent all unnecessary destruction of growing timber on the said licensed land by any person whomsoever,

and shall exercise strict and constant supervision to prevent the origin and spread of fires, and shall preserve the growth of young timber trees.

(6.) The license shall contain a description of the land on which the timber may be cut and shall vest in the licensee, during the continuance of the license, the right to take and keep exclusive possession of the lands so described for the purposes for which the license is granted, subject to the conditions herein provided or referred to respecting the same, and such license shall vest in the holder thereof all right of property whatsoever in all trees and timber cut within the limits of the license during the continuance thereof, whether such trees be cut by the authority of the licensee or by any other person with or without his consent; and such license shall entitle the licensee to seize in replevin, revendication, or otherwise, as his property such timber where the same is found in the possession of any unauthorized person, and also to bring any actions or suits at law or in equity against any party unlawfully in possession of any such timber or of any lands so licensed, and to prosecute to conviction and punishment all persons trespassing upon the said land so licensed, and cutting or injuring any of the trees or timber growing thereon, and to recover damages for any injury so sustained by the licensee, and all proceedings pending at the expiration of any such license may be continued and completed as if the license had not expired: Provided that such license shall be subject to the right of the Governor in Council to grant any of the said land, exclusive of the trees or timber thereon, for the purposes of agriculture or for mining, and to deal with the same fully and effectively for such purposes; and provided also, that nothing in the said license shall be construed to prevent or debar any person in this colony from cutting or using any trees or timber on such lands for the *bona fide* purposes of the fisheries, for building vessels, for masts, for poles for erecting flakes, for fencing and for firewood, and such like purposes; provided further that any person or persons may, at all times make and use roads upon and travel over the grounds so licensed; and that the said license shall not be so construed as to prevent any person or persons from taking from the ground covered by the said license, standing timber of any kind, (without compensation therefor), to be used for the making of roads, bridges, or public works, by or on behalf of the Government of Newfoundland, the authority of the Surveyor General having been first obtained; and that persons settling under lawful authority or title on the land so licensed, shall not in any way be molested or interrupted in clearing and cultivation by the licensee or any person acting for or on his behalf.

(7.) Such license shall be subject to forfeiture for infraction of any one of the conditions to which it is subject; and in such case the Governor in Council shall have the right without any suit or other proceedings at law or in equity, or compensation to the licensee, to cancel the same, and to make a new license or disposition of the land described therein to any other party, at any time during the term of the license so cancelled: Provided that the Governor in Council, if he sees fit, may refrain from cancelling such license for the non-payment of the said sums, to be paid by the said licensee, mentioned in the first sub-section, and may enforce payment of the same by action or suit at law, or by distraint upon any property of the licensee on the said licensed land.

(8.) All labor employed in carrying out the work contemplated to be performed under any license granted under this chapter, except skilled labor, shall be given to persons who have resided in Newfoundland for a period of at least two years previously.

### Mineral Lands.

**60**. In all cases where application has been made for grants or leases of mineral lands by persons who have held any such lands under license to search, and such grants or leases have not been made by reason of the square mile or other part selected not having been duly surveyed, the Surveyor General shall cause to be served on every such applicant, his executors or administrators, a notice in the form set forth in schedule C to this chapter, signed by the Surveyor General, and every person served with such notice or a copy thereof shall, at his own cost and charges, within twelve months after the date of service thereof on him, cause a full and complete survey of the land for a grant or lease of which he has so applied, to be made by a surveyor, and shall file the report and plan of such survey in the office of the Surveyor General, within the said period of twelve months. Every person who shall fail so to file such report and plan within the period above prescribed, shall forfeit all claim to any grant or lease so applied for, and all right, interest and claim in or to every part of the land in such license to search named or so applied for, and all minerals therein, and the same shall revert to the Crown. In case any person, to be served as aforesaid, shall reside out of this colony and shall have a recognized agent therein, the notice may be served on such agent, and if there be no such agent, then the posting of such notice to the person so to be served at his last known address shall be held to be sufficient service on him, and if the address of the person so to be served be not known, a notice shall be published in the *Royal Gazette*, which notice shall be in the form prescribed in said schedule C to this chapter, or as near thereto as may be, and the notice so published shall be held to be sufficient as if such notice were personally served on the said applicant.

**61**. It shall be lawful for all persons whomsoever to search and prospect for minerals in and upon all lands in this colony and its dependencies

without first obtaining a license to search therein, and to explore the same by all such means as may be necessary to prove the existence, value and extent of minerals therein or thereunder, whether by surface or subterranean prospecting or excavation: Provided that such search and prospecting shall be *bona fide* with a view to obtain a mining location and lease thereof under the provisions of this chapter, and that no person so searching or prospecting shall remove and take away from any of the said lands any greater quantity of ore, mineral or metal than shall be necessary to be used as samples; and further, that this section shall not apply to any land appropriated or reserved by the Crown for any purpose.

**62.** No such search, prospecting, exploration or excavation shall be deemed to give any person an exclusive right to search, prospect, explore in or excavate any of the said lands, unless a party so searching shall comply in all respects with the provisions of the next following section.

**63.** In case any person after such search, prospecting or exploration mentioned in the sixty-first section of this chapter, shall discover any vein, lode or deposit of mineral in or upon any of the said lands, and shall desire to obtain a lease thereof from the Crown, he shall proceed as follows:—

(*a.*) He shall forthwith, after such discovery, mark the location in respect of which he intends to apply for such lease, by placing thereon, at each of four corners, (which corners shall represent a square, or as near thereto as may be), a wooden post not less than four inches square, driven not less than eighteen inches into the ground; and in case of the ground being too rocky to admit of so driving the posts into it, he shall build about each of the said posts, to support and keep it in place, a cairn or mound of stone three feet in diameter at the base and eighteen inches high. The land contained between such four posts shall be called a "mining location," and the extent thereof shall be not more than one square mile; but, in case the vein, lode or deposit of mineral so discovered shall be situate on land which shall not admit of being located within or bounded by four straight lines, then the said posts shall be so placed as to show the extreme boundaries as nearly as may be of the mining location of which a lease is to be applied for.

(*b.*) As soon as circumstances permit after placing said posts, such person shall give notice in writing to the Surveyor General, in such form as may be prescribed by him, of his having so staked such land, with as full and correct description as possible of the same, together with a diagram of the same, showing as nearly as possible its position on a chart or map, and of his intention of applying for a lease thereof, and shall deposit a fee of twenty dollars therewith; the first notice filed in the Surveyor General's office shall be considered as giving the

person filing such notice a priority of claim over any other applicant for same land.

(*c.*) The payment of the aforesaid fee of twenty dollars shall entitle the person filing such notice to a license from the Surveyor General of all minerals in the said mining location for a period of twelve months from the day of the date of the staking the same; provided there is no previous claim in the same or any part thereof.

(*d.*) At the end of the aforesaid period of twelve months, the licensee must notify the Surveyor General of his intention to hold the said land, and, with his notification to the Surveyor General, must deposit the sum of thirty dollars, which shall entitle him to a renewal of the license for the further period of twelve months, during which time the licensee must expend the sum of two hundred dollars, or its equivalent in labor, in exploring for and developing the minerals in the said mining location.

(*e.*) At the end of the aforesaid second period of twelve months the licensee must notify the Surveyor General of his intention to hold the said land or mining location for a further period, and with this notice he shall deposit the sum of fifty dollars, together with an affidavit of his having fulfilled the conditions of expenditure required by the next preceding sub-section, and he shall then be entitled to a renewal of the license for a further period of twelve months, during which time he shall expend, in further explorations and development, the sum of four hundred dollars, or its equivalent, in labor.

(*f.*) At any time during the duration of the said license or renewals thereof, the licensee may apply for a lease of the mining location therein described, in writing, to the Surveyor General, and with this application he shall deposit the sum of twenty-five dollars. Thereupon, as soon as convenient, the Surveyor General shall provide the services of a surveyor, free of expense to the applicant, to make a survey of the said mining location; the applicant shall, however, provide all labor required in cutting lines or other charges in connection with making said survey.

**64.** In cases where more persons than one shall be engaged in searching any one part of the said lands at the same time, the person who, after discovering a vein, lode or deposit of mineral therein, shall first erect boundary posts as provided by the sixty-third section of this chapter, shall be entitled to the absolute and exclusive right of the mining location thereby created for the period, and to all the rights and privileges mentioned in the last preceding section of this chapter, notwithstanding any other person may have previously discovered mineral in or upon the same location.

**65.** (1.) The Governor in Council may issue licenses to search for gold over an area not exceeding one-half square mile for a period of one year from the date of such application, on payment of a fee of twenty-five dollars, which license shall be renewable for a further term of one year on payment of a fee of fifty dollars.

(2.) The Governor in Council may issue leases to mine and work gold, over an area not exceeding one-quarter of a mile square, to the holder of a license to search, for a period of twenty-one years, if applied for before the expiration of the said license, on payment of a fee of fifty dollars at the time of application, subject to the payment of a royalty of three per cent. per annum on the gross amount of gold mined.

(3.) Every such lease shall be subject to the condition that, if the lessee do not in each and every year during the said term of twenty-one years, *bona fide* lay out and expend in and about the working of mines and minerals in such land, the sum of five hundred dollars, then the said lease shall be forfeited, and the land by such lease granted with all the gold ond other minerals therein shall revert to the Crown.

(4.) The lessee or his assigns shall keep true books of account of the working of such mines, and shall render to the Surveyor General, for the time being, a correct account of the moneys expended thereon, and of all gold mined or raised from the area included in the said lease, on the 31st day of December in each and every year of the said term; and such statement shall be attested before a stipendiary Magistrate or Justice of the Peace, or commissioner of affidavits. Should any wilful mistake or mistatement be made as regards the value of the gold raised or the amount of money expended by the lessee or his assigns, the said lease shall be forfeited, and the land thereby leased with all the gold and minerals therein, and all improvements made by the said lessee or his assigns shall revert to the Crown.

**66.** The Governor in Council may issue a mining lease of the mines and minerals contained in any such mining location to any person who shall apply for the same in manner above provided, and who shall have in all respects conformed to the requirements of this chapter, and a lease of fifty acres of unoccupied surface land, within such mining location, for the term of five years from the date of application therefor, but every such lease shall be subject to the condition, that if the lessee or his assigns do not *bona fide* lay out and expend in and about the working of such mines and minerals, during each of the first four years from the date of the lease, the sum of eight hundred dollars, and during the fifth year the sum of two thousand eight hundred dollars, then the said lease shall be forfeited, and

the land by such lease granted, shall revert to the Crown, and every such lease shall contain such other conditions and reservations as the Governor in Council deem just, and shall be subject to the like forfeiture if such conditions and reservations are not complied with.

**67.** No such lease of mines or minerals shall in any way interfere with the granting of the surface land for agricultural, lumbering or other purposes, except to the extent of fifty acres as aforesaid.

**68.** The Governor in Council may, upon application, grant to the holder of a mining lease a free right of way for tramways and roads, and an increased quantity of surface land, if the wants of the lessee's mines in actual operation require it, at the price of thirty cents per acre. If such application should comprise any land under lease, grant or license, for lumbering or agricultural purpose, the holder of the mining lease shall have a right of pre-emption of such portion as may be necessary for the efficient working of his mine, and of such rights of way for construction of such tramways or roads; and the compensation to be awarded, as well as the question whether or not the land is *bona fide* required for the purpose aforesaid shall, in case of disagreement, be settled by arbitration.

(1.) The arbitration shall be conducted as follows:—The arbitrators shall be three, one person appointed by each of the contestant parties; the third arbitrator shall be the Surveyor General or some person appointed by writing under his hand, and the award of any two of the said arbitrators shall be final: Provided that either of the said parties may appeal therefrom to the Supreme Court within one month from the publication of the award, upon giving, within that time, due notice to the opposite party.

(2.) In estimating the amount of such compensation only the actual intrinsic value of the surface lands, as lumbering or agricultural or other land, as the case may be, and not the additional value thereof to the miner, by reason of its being required for such mining purposes, shall be taken into consideration; but, if by reason of the loss of such surface land under this chapter, difficulty or delay be occasioned to the grantee, lessee or licensee in obtaining an equivalent quantity elsewhere, due weight may be given to that circumstance in estimating the said compensation.

**69.** When any person shall be desirous of searching and prospecting for minerals, as provided by the sixty-third section, on private property, and shall be unable to make an agreement with the owner of such property for leave to enter, and for easements and for damage to such lands, the question in difference shall be decided in the manner prescribed in the last preceding section.

**70.** On compliance with the terms and conditions contained in any such lease of mineral lands and with the requirements of this chapter, upon proof to the satisfaction of the Governor in Council of the expenditure of the sum of six thousand dollars upon the working of mines and minerals at any time within the period of five years, as provided by the sixty-sixth section, every lessee of such mineral lands shall be entitled to a grant in fee thereof.

MISCELLANEOUS PROVISIONS.

**71.** All applications, whether for licenses of occupation, or for leases or grants, shall be by petition to the Governor in Council.

(1.) All petitions for grants under this chapter, issuable upon the performance of any conditions, shall be accompanied by an affidavit showing how such conditions have been performed, which affidavit shall be made before a Justice of the Peace or commissioner of affidavits.

(2.) All applications for licenses of occupation and for leases and grants, under this chapter, shall be filed, with all accompanying papers, in the Surveyor General's office. A proper record shall be kept of such applications and of the date of their being received at the department.

(3.) Duplicates of licenses of occupation and of all leases and grants shall be kept and recorded in the Surveyor General's office, all such records shall be open to the inspection of the public, at reasonable hours, on payment of a fee of twenty cents for every search.

**72.** The following fees shall be payable in respect of all land granted or leased, or for which licenses of occupation may issue under this chapter:

(1.) For mining leases, fifty dollars, and for subsequent grants in fee, twenty-five dollars.

(2.) No grant or license, whether styled in this chapter a free grant or license, or otherwise, shall issue but on payment of a fee of not less than one dollar.

(3.) No grant, lease or license shall issue to any person, in respect of which any price or fee is payable under this chapter, until such price or fee be paid in full.

(4.) On location ticket for homestead, ten dollars.

**73.** The agent of the Government shall have free access to, and be at liberty at all reasonable times, to inspect the works being carried on

upon the land given or let by any mining lease or grant under this chapter, issuable upon the performance of any conditions.

(1.) True books of account of the working of such mines and minerals shall be kept by the lessee or his assignee, and shall be open at all reasonable times to the inspection of the Surveyor General, or such agents as the Governor in Council may appoint, for the purpose of ascertaining whether the conditions of the lease have been complied with.

FORFEITURE OF GRANTS.

**74**. When any grantee, lessee, licensee, holder of location ticket, or other person, refuses or neglects to deliver up possession of any land after forfeiture of the same under the provisions of this chapter, or whenever any person is wrongfully in possession of Crown land or having lawfully entered in possession or occupation thereof howsoever, has in any way forfeited his right to such possession or occupancy and refuses to vacate or abandon possession of the same, the Surveyor General may apply to a Judge of any Court having competent jurisdiction, for an order in the form of a writ of ejectment or of *habere facias possessionem*, and the said Judge, upon proof to his satisfaction that such land was so forfeited and should properly revert to the Crown, or that such person is wrongfully in possession of Crown lands, shall grant an order upon the grantee, lessee, licensee, holder of location ticket, or person or persons in possession, to deliver up the same to the Surveyor General or person by him authorized to receive such possession; and such order shall have the same force as a writ of *habere facias possessionem*, and the Sheriff shall execute the same in like manner as he would execute the said writ in an action of ejectment.

**75**. The Governor in Council may, by order in Council, reserve for any public use or purpose whatever, any forest or bog lands and any unoccupied or ungranted Crown lands.

**76**. The Governor in Council shall prescribe rules and regulations as to the forms and modes of application for licenses, leases and grants, and generally for the purpose of carrying out this chapter, and for the management and conduct of business in the Surveyor General's department, and may, from time to time, repeal, amend or alter such rules and regulations, and the same shall come into operation after one month's previous publication in the *Royal Gazette* and two other newspapers in this colony, and shall be as binding after such publication as if herein enacted.

**77**. No application for a mining lease or grant shall be valid unless the fee payable thereon shall be deposited with the application.

**78**. The Surveyor General shall, every year, furnish to the Governor, for the purpose of being laid before the Legislature, a detailed return of licenses, leases and grants of all mineral, agricultural, timber, and other

lands, and of all water rights, issued within the year ending the last day of December then last past, of all the monies received for the same, the names of the licensees, lessees and grantees, with the date of and expenses incurred in and about the same.

**79.** Nothing in this chapter contained, except the provisions of section seventy-four, shall be construed to affect the rights of persons holding grants, leases or licenses to search for mineral, issued before the passing of the Act 47 Victoria, chapter two, which licenses and rights thereunder shall continue in full force and effect as if the said Act and this chapter had not been passed.

## SCHEDULES.

### A.

APPLICATION FOR A HOMESTEAD RIGHT.

I, , of , do hereby apply for a homestead of acres of land situate (here describe the land) under the homestead provisions of title II., chapter 13, of the Consolidated Statutes; and I declare that I am over eighteen years of age, that I have not previously obtained a homestead under the provisions of the said chapter, that there is no person residing or having improvements on said land, and that this application is made for my exclusive use and benefit, with the intention of residing upon and cultivating the said land.

### A. 1.

APPLICATION BY AGENT FOR HOMESTEAD RIGHT.

I, , of , agent for , of , do hereby, on behalf of the said , apply for a homestead of acres of land situate (here describe the land) under the homestead provisions of title II., chapter 13, of the Consolidated Statutes; and I declare that the said is over eighteen years of age; that he has not previously obtained a homestead under provisions of the said chapter; that there is no person residing on or having improvements on said land, and that this application is made for the exclusive use and benefit of the said , with the intention of his residing upon and cultivating the said land.

B.

LOCATION TICKET.

This is to certify that is entitled under the provisions of title II, chapter 13, of the Consolidated Statutes, to enter upon (here describe the property) containing acres, for the purpose of securing a homestead right in respect thereof.

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C.

NOTICE.

You are hereby notified that by virtue of title II., chapter 13, of the Consolidated Statutes, unless you cause to be made and filed in my office within twelve months after service hereof on you (or after the date hereof, as the case may be), a plan or survey as required by the said chapter, of the land referred to in your application for (a lease or grant as the case may be) thereof, which application is dated the day of , A. D. 18 , all your claim to the (lease or grant as the case may be) applied for, and to every part of the land of which (lease or grant as the case may be) is sought, and the mines and minerals therein will be forfeited.

St. John's, Newfoundland, the day of , A. D. 18 .

*Surveyor General.*

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# CHAPTER 14.

## Of the Board of Agriculture.

SECTION
1.—Appointment of Board of Agriculture.
2.—Surveyor General to be Chairman, and Secretary to be elected.
3.—Board to meet once a month. Special meetings.
4.—No payment for member of Board; but Secretary may be paid.
5.—Duties of Board.
6.—Annual sum of $5,500 allocated to Board.
7.—Organization of agricultural societies.
8.—Appropriations to societies.
SECTION
9.—Objects of societies.
10.—Annual meetings of societies.
11.—Powers and duties of officers.
12.—As to bye-laws, &c.
13.—Reports of societies.
14.—Forfeiture on failure to report.
15.—Board may appoint inspector for books and accounts of societies, &c.
16.—Power of Board to make rules.
17.—Contracts with Board in name of Chairman.
18.—Actions by and against Board; notices, &c.

**1.** The Governor in Council shall, bi-ennially, appoint a Board of Agriculture, consisting of nine persons, of whom one shall be the Surveyor General of the colony for the time being. Five of such board shall be a quorum.

**2.** The Surveyor General of the colony for the time being shall be the chairman of the said board, *ex officio*, and the said board shall, at its first meeting, elect a secretary. The secretary may be a person other than a member of said board.

**3.** The said board shall meet at least once a month in the office of the Surveyor General in St John's, or such other place as the board may determine. Special meetings may be called at any time by the secretary at the instance of the chairman or upon the written request of three members.

**4.** The board shall not allow or pay any sum to a member or officer for acting as such member or officer with the exception of the secretary, who may be paid a salary, as hereinafter set forth.

**5.** It shall be the duty of the board—

(1.) To take measures for the formation of societies throughout the colony for the advancement and encouragement of agriculture.

(2.) To receive the accounts and reports of such societies, and before the annual grant hereinafter mentioned, to see that they have complied with the provisions of this chapter.

(3.) To enquire and obtain information touching the requirements of agriculture in this colony, and to furnish and diffuse such information in such manner as the board shall consider advisable.

(4.) To obtain animals of new and improved breeds; new varieties of grains, seeds, vegetables, plants, and other agricultural productions, for general and equitable distribution throughout the colony; to make arrangements for the care and keeping of such animals; to institute, supervise, and conduct a stock or model farm, and to adopt every measure in their power to promote, encourage, and improve agriculture in this colony.

(5.) To hold exhibitions of agricultural and horticultural products, animals, and domestic manufactures, and to fix the time, articles of competition, and lists of prizes to be awarded, and the regulations under which such exhibitions shall be held, of which due notice shall be given at least six months before the same shall take place.

**6.** The Receiver General is hereby authorized, for the purposes of this chapter, to pay to the said board, out of the funds of the colony, annually, a sum not exceeding four thousand dollars, out of which the board may expend a sum not exceeding two hundred dollars for the salary of their secretary, and a further sum not exceeding three hundred dollars for stationery, printing, and other incidental expenses; and they shall furnish to the Governor in Council, not later than the fifteenth day of February

in every year, a detailed account of their expenditure, with proper vouchers and a full report of their proceedings to be laid before the Legislature.

**7.** An agricultural society may be organized in any locality wherever twenty-five persons or more, being residents of the locality, shall become members thereof by signing a declaration in the form of schedule A. to this chapter, and by each member paying not less than one dollar annually to the funds thereof A true copy of such declaration shall, within one month after the money has been so paid, be transmitted to the secretary of the board.

**8.** When any society shall be so organized, such society shall be entitled to draw annually, from any monies under the control of the board, an amount equal to the amount of the subscriptions of the members thereof so raised and paid; the payment of such subscriptions to be certified upon oath by the secretary or treasurer of the society making application, within one month after the annual meeting of such society.

**9.** The objects of such agricultural societies shall be to encourage and promote the introduction of improved stock, seeds, fruit, roots, implements, methods of culture and improvement in farm buildings and domestic manufactures; to hold shows and exhibitions; to award premiums for excellence, and to diffuse information concerning agriculture and horticulture. The funds of such societies, derived from the subscriptions from members or the public grant, shall not be expended for any object inconsistent with those above mentioned.

**10.** The annual meeting of the societies shall be held on the first Monday in December in each year, or as near thereto as circumstances will permit, when they shall each elect a president, vice-president, secretary and treasurer, and not more than three directors.

**11.** The officers appointed at the formation of such societies shall, until the election of their successors at the annual meeting, exercise all the powers vested in such societies by this chapter; they shall hold meetings, of which at least two days' notice in writing shall be given, and at any such meeting five shall be a quorum.

**12.** The said officers and directors may at any such meeting, make, alter, and repeal bye-laws and rules to be subject to the approval of the board, and not to come into force until so approved

**13.** Such officers and directors shall, in addition to the ordinary duties of management, present, at the annual meeting in December, a report of the proceedings of the society during the year, in which shall be stated the names of all the members of the society, the amount paid by each, the names of every person to whom a premium was awarded, with the name and class of the animal article or thing in respect of which the same was granted, together with such remarks upon the general agricultural

interests of the locality as they may consider pertinent, and a statement of the receipts and disbursements of the society during the year, and a copy thereof, certified by the president and secretary to be correct, shall be sent to the board within one month thereafter.

**14.** If any society shall fail or neglect to render such account and report, or shall expend any portion of its funds for purposes other than those mentioned in section nine, it shall forfeit all claim to the grant mentioned in the ninth section of this chapter for the year next succeeding, unless the board shall order otherwise.

**15.** The board may, at any time, appoint a person to inspect the books and accounts of any society receiving aid from the board under the provisions of this chapter, and all officers of such society, when required so to do, shall submit its books and accounts to such inspection, and truly to the best of their knowledge, answer all questions put to them in relation thereto, or to the funds of the society.

**16.** The board shall have power to make rules and bye-laws for the regulation and conduct of its affairs, subject to the approval of the Governor in Council: Provided that the same shall not be inconsistent with the provisions of this chapter.

**17.** All contracts or agreements of or with the board shall be made in the name of the chairman, and signed by him.

**18.** All actions by or against the board, either *ex contractu* or in tort, may be taken in the name of the chairman, or in case of a vacancy in the office of chairman, in the name of the secretary, and no action shall be commenced against the board for anything done in pursuance of the provisions of this chapter until one month after notice in writing shall have been delivered to the said chairman or to the secretary, or left at the office of the board, in which notice shall be clearly and explicitly stated the cause of action, the name and place of abode of the person who is to bring the same, and the name and place of abode of his attorney or agent.

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## SCHEDULE A.

We, whose names are hereto subscribed, agree to form ourselves into a society, under the provisions of chapter 13 of the Consolidated Statutes, to be named the Agricultural Society; and we severally agree to pay to the treasurer of the said society, towards the funds thereof, the sums set opposite our respective names.

| Names of Subscribers. | Sums Subscribed. |
|---|---|
| | |

# CHAPTER 15.

## Of the Encouragement of Sheep Farming.


SECTION

1.—Governor in Council may grant sheep-farming licenses.
2.—Holder entitled to grant in fee; proviso.
3.—Power to remit duties.
4.—Shepherd's dogs.
5.—Bounty.
6.—Exception as to mining rights and rights of way.


**1**. The Governor in Council may grant licenses of occupation upon ungranted Crown lands, which may be deemed suitable for the purpose of sheep-farming, to the extent of three square miles for each license, (such licenses not to exceed ten in number), for a period of ten years, subject to such terms and conditions as the Governor in Council may determine.

**2**. Any holder of such license having efficiently maintained upon the lands so licensed a flock of at least five hundred sheep for the period of ten consecutive years, shall be entitled to a grant in fee of the land so licensed: Provided that the Governor in Council may allow such licensee three years for preparing and stocking such farm.

**3**. The Governor in Council may remit the duties payable in respect of agricultural implements imported into this colony for the purposes of sheep-farming established under this chapter.

**4**. All shepherds' dogs or collies, used for the purposes of sheep-farming, shall be exempted from the operation of all laws having reference to dogs in general, and from all penalties, assessments and taxes imposed thereunder.

**5**. Out of the general revenue of this colony the sum of four hundred dollars shall be appropriated, subject to the order of the Governor in Council, and paid in equal sums to the first two persons or companies, or to any one of them, who shall actually establish, stock with the aforesaid number of sheep and work sheep-farms in this island, in accordance with the terms of this chapter, and who shall have satisfied the Governor in Council as to the *bona fides* of their respective claims.

**6**. No mining or lumbering rights or interests, and no public rights of way shall be held to be included in any licenses or grants issued under this chapter.

# CHAPTER 16.

## Of the Encouragement of Manufacturing.


SECTION

1.—Premium on wool imported for manufacturing—five per cent.

2.—Premium upon certain articles imported—seven and one-half per cent.

SECTION

3.—Premium to be paid upon production of an affidavit.

4.—Certain articles to be admitted free of duty.

5.—Chapter to remain in force until 1895.


**1.** There shall be granted a premium upon all wool imported into this colony and its dependencies for the purpose of manufacturing wearing apparel within this colony, to be computed at the rate of five per cent. upon the original cost of such wool at the place where the same shall be shipped for importation.

**2.** There shall be granted a premium upon all hemp, hemp yarn, flax, raw cotton, cotton yarn, coir yarn, manilla, sisal and jute, imported into this colony and its dependencies, for use in the manufacture within this colony of twines, lines, nets, seines, cordage or other fishing gear, to be computed at the rate of seven and a half per cent. upon the original cost of said materials at the place where the same shall be shipped for importation.

**3.** The premiums hereby granted shall be paid to the manufacturer of such wearing apparel, twines, lines, nets, seines, cordage or other fishing gear, upon the production before the Receiver General of an affidavit setting forth that the goods so imported have been used in the aforesaid manufactures within this colony.

**4.** All the articles mentioned in sections 1 and 2, upon which a premium is payable, and all machinery to be used in manufactures within this colony, shall be admitted free of duty.

**5.** This chapter shall continue in force from the passing thereof until the thirty-first day of December, which will be in the year one thousand eight hundred and ninety-five.

# CHAPTER 17.

## Of the Board of Works.


SECTION
1.—Constitution of the Board.
2.—Powers of Board.
3.—Secretary and Accountant.
4.—Salaries of members.
5.—Governor to make rules, &c.; Board may make bye-laws.
6.—Governor to appoint and remove officers and servants; salaries, &c.
7.—Record of proceedings to be kept.
8.—Governor may issue further or other orders.
9.—Actions in name of Chairman; month's notice.
10.—Salaries to be paid quarterly.
11.—Board to make annual report to Legislature.


1. The Board of Works shall be composed of a chairman and four other members to be appointed, as occasion may require, by the Governor in Council, to hold office during pleasure, any three of whom shall be a quorum, and the Chairman or one of the other members shall be a member of the Executive Council.

2. The Board shall have superintendence and management of Government House, Colonial Building, Court House, the Penitentiary and Gaols, Lunatic Asylum, Hospitals, Custom House, Light Houses erected and to be erected, Buoys, Beacons, Poor Asylum, and all other buildings and property belonging to the colony, and also of all public roads, streets and bridges, made or to be made, within the colony: Provided that this section shall not affect the authority conferred on outport Road Commissioners by chapter 18 of these Consolidated Statutes, entitled "Of Roads and Road Commissioners."

3. The Board of Works shall have a secretary and an accountant.

4. Each member of the Board, except the Chairman, shall be paid the yearly salary of two hundred dollars

5. The Governor in Council shall have full power, at all times, to make and establish general rules for the meetings and management of the Board: Provided that the Board may make bye-laws and rules, subject to the approval of the Governor in Council,

6. The Governor in Council shall appoint and remove all officers, superintendents and keepers of public buildings and light houses, road inspectors and surveyors, and other necessary officers and servants of the said board, and the persons so appointed shall respectively hold office during pleasure The Governor in Council shall allow to all persons so employed such salaries or other compensation as he shall deem reasonable,

but not to exceed the amount now allowed any officer without the sanction of the Legislature, and subject to its annual revision and control.

7. The Board shall keep a full and true record of all proceedings had at the several meetings, and no such proceedings shall be of any force or effect until the same shall have been confirmed by the Governor in Council.

8. In case of any such proceeding, or any part thereof, not being confirmed, the Governor in Council may direct that some further or other proceeding be had by the said Board, and such direction shall be entered upon the records of the said Board, and shall be by them carried into effect.

9. All actions brought by or against the said Board may be taken in the name of the chairman for the time being; and no action shall be commenced against the said Board for anything done in pursuance of the provisions of this chapter, until one month after notice in writing shall have been delivered to the said chairman, or left at the office of the said Board by the party who intends to initiate such action, his attorney or agent, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring the same, and the name and place of abode of his attorney or agent.

10. The salaries payable under this chapter shall be paid by warrant on the Receiver General.

11. The Board shall make a general statement of their affairs to the Governor quarterly, and a particular report yearly of their proceedings, to be laid before the Legislature at the opening of the next session.

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# CHAPTER 18.

## Of Roads and Road Commissioners.


SECTION

1.—Governor in Council to appoint Road Boards.
2.—Moneys appropriated for outport districts to be expended by boards.
3.—Appropriation for main lines to be expended by Board of Works.
4.—Governor in Council may increase number of boards.
5.—May sub-divide districts.
6.—Roads to be built by tender and contract.
7.—Boards may divide contracts.
8.—Boards to take security.
9.—Contractor to be paid upon certificate of inspector.
10.—Width of roads.
11.—Survey to be made before making new road.
12.—Annual contracts for repairs of main lines.
13.—Surplus of appropriations to be applied to other roads.
14.—Ten per cent. of appropriations for expenses.
15.—Bridges may be repaired upon Executive authority.
16.—Chairman of Board of Works to be Supervisor of Roads.
17.—Compensation for private property taken for making roads.
18.—Notice of action against board.
19.—Tender of amends.
20.—Payment into Court.
21.—Penalty for damaging, &c., roads.
22.—Penalty for encroaching on roads, &c.
23.—Encroachments may be removed.
24.—Reservations in St. John's for markets.
25.—Compensation for land taken for public works.

1. The Governor in Council shall appoint within the limits of each outport electoral district, one or more Boards of Road Commissioners.

2. All sums of money appropriated for local roads in the several outport electoral districts shall be applied and expended by the said respective Road Boards within their respective limits.

3. All sums of money appropriated for main lines of roads in the colony, and for local roads in the electoral district of St. John's outside of the limits of the town of St. John's, as defined by the St John's Municipal Act shall be applied and expended by the Board of Works.

4. The Governor in Council may increase the number of the said Boards and the members thereof, when necessary.

5. The Governor in Council may sub-divide the several districts of the colony for the purpose of the appointment of Road Boards therein, and for the expenditure of moneys that may be granted within their respective limits.

6. The said Boards shall not proceed in the construction, repair or improvement of any road, street or bridge, otherwise than by tender or contract, or by auction to the lowest bidder in such allotments as may be marked off after a careful examination by the Boards or under their inspectors; and in all such cases of letting by auction, such Boards shall put up a sufficient number of notices not less than ten days previous to such sale, in three or more of the public places in the neighborhood where the work is to be done; which notice shall specify and describe the work to be performed, and also the place, day and time when and where the same will be let by auction as aforesaid; and the inspectors of the Board shall attend at the time and place so appointed, and then let, to the lowest bidder, such allotments; and the purchaser shall immediately thereafter enter into written contracts with sufficient sureties for the faithful performance of the work, in time and manner set forth in such contracts: Provided that the Governor in Council may authorize the expenditure of such moneys in the employment of daily or time labor.

7. The Boards may divide and apportion the work to be performed on any road, street or bridge, into small contracts or allotments, to meet the exigencies of the people of the several districts.

8. The Boards, before entering into any such contracts, shall take security, as is hereinbefore provided for, for the due performance of the same, and upon the production of a certificate from the Board of one half of the amount of work contracted for being completed, such contractor shall be entitled to receive half part of the amount of his contract; and such Boards shall so frame their contracts that the same be finished within a limited time, and payment of one-third of the full amount thereof

shall always be withheld until the work contracted for shall appear, by the solemn declaration in writing of the inspector or surveyor of such Boards, specifying the particulars and measurement of such work, to have been fully completed, examined and passed agreeably to contract; and every such inspector or surveyor who shall knowingly make a false declaration shall be subject to the same punishment in law as in case of wilful perjury.

**9.** Within six days after any contractor for any road, street or bridge shall have given notice to any board, surveyor or inspector, in the district where such road, street or bridge may be situated, of the completion of his contract therein, such surveyor or inspector shall inspect such road, street or bridge, and, if the contract be completed, forthwith grant a certificate accordingly; and the chairman of the said Board shall, on receiving such certificate, grant a negotiable order under his hand to the contractor, to receive payment by warrant of the Governor on the Receiver General.

**10.** No road shall be gravelled to a greater width than seven feet, or shall have a base of less width from drain to drain than fourteen feet, when such road shall be situated more than five miles from St John's, or four miles from Harbor Grace, Carbonear or Brigus, respectively; and where any land within thirty-three feet of the centre of any road now laid out remains unappropriated, and where any land within thirty-three feet of the centre of any road hereafter to be laid out shall, at the time of any such road being laid out, be unappropriated, such land shall not be granted, conveyed or appropriated to any private purpose All main lines of roads hereafter to be opened shall be one hundred feet wide.

**11.** Previously to any sum of money being expended by any Board in opening or making any new road, the proposed line of road shall be first surveyed by or under the direction of the Board, and approved by them.

**12.** The Governor in Council may enter into any arrangements for the construction of suitable dwellings on such parts of main lines of roads as may be found most suitable for location, and for letting out the said roads by annual contract for the repairs thereof: Provided that the cost of the erection of such dwellings shall be deducted from the sum appropriated for the said main roads.

**13.** In all cases where any sums of money appropriated by the Legislature to any road, street or bridge, shall be found to be more than sufficient for making, constructing or repairing the same, the said boards shall appropriate and apply such surplus money to the making, constructing or repairing of any other road, street or bridge within the district for which such money shall have been granted: Provided that when any sum of money granted for any particular part of any main road shall be found more than sufficient for the purpose of such grant, the surplus

thereof shall be expended on such other parts of the same line of road within the district, as may require repair.

**14.** The Governor in Council may appropriate a sum not exceeding in the whole ten per cent. upon the amount granted in any act of the Legislature for making, repairing and improving roads, streets and bridges, towards defraying all expenses attendant upon the expenditure of such amount, that is to say: the expenses of surveying, inspecting and overseeing, the remuneration of chairmen, secretaries and all other necessary officers, printing, stationery and postage.

**15.** If at any time during the intervals between the meetings of the Legislature, any bridge should require repairs or renewal, and no vote of the Legislature be available for such purpose, the Governor in Council may authorize and direct the repairs or renewal of such bridge, and charge the expense necessarily incurred for such service against any moneys that may be thereafter appropriated by the Legislature for road service in the district or for the road on which such bridge may be situated.

**16.** The Chairman of the Board of Works shall be Supervisor General of all roads, streets and bridges; and all orders for the payment of moneys from the said boards shall be certified by the Financial Secretary before payment, so as to confine the expenditure within the respective appropriations. The Chairman of the Board of Works or his officers shall inspect outport road work, and make yearly report thereon, and estimate the probable amount yet required; and the chairman of each board within the respective districts shall, on or before the first day of December in each year, and oftener if required, transmit to the Supervisor General correct statements of all works done and moneys paid on such roads, streets and bridges as may be within his said district, together with an estimate of the probable amount which may be necessary to complete the same; and such returns shall be reduced into order by the said Supervisor General; and a consolidated printed report thereof shall be by him laid before the Governor in Council and furnished to the Legislature within ten days after the opening of the next session thereof.

**17.** Whenever it shall become necessary for the opening, making or widening of any road, street or other work, to appropriate any piece or parcel of land, being private property, the Board of Works, or any other road board shall pay out of such moneys as shall be at their disposal for the purpose of making such road, street or other work, a fair and reasonable compensation to every person having any interest in the land so intended to be appropriated, and also compensate any person for any damage which may be occasioned to his property by the making, opening or widening such road, street or other work; and if the said board and the owner of such property cannot agree upon the amount of compensation, such amount shall be ascertained by the chairman of such board and two other assessors, one of whom shall be nominated by the said board,

and the other by the owner of the land and who shall assess and award the amount of compensation (if any) that shall be paid for the value of the said land and for damage occasioned, together with all reasonable costs, which award shall be final; and if the owner of the land shall neglect to nominate an assessor within five days after being thereto required, the chairman of such board shall nominate an assessor on behalf of the owner; and the chairman and the two assessors shall be paid a sum of two dollars each for their services in that behalf: Provided that every such award shall be made in writing, within ten days after any day that may be appointed for the hearing of the case; but before payment or tender to the parties interested of the sum awarded for compensation, the said boards, or any person authorized by them, may enter into and upon and take possession of any land so to be appropriated for any road, street or lane as aforesaid.

18. No action shall be commenced against any board, commissioners, surveyors, contractors or other person, for anything done by them or him in pursuance of the provisions of this chapter, until one month after notice in writing shall have been delivered to them or him, or left at their or his usual place of abode by the party who intends to institute such action, his attorney or agent, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring the same, and the name and place of abode of his attorney or agent.

19. Any such board, commissioners, surveyors, contractors and other persons may, at any time within one month after such notice shall have been given, tender amends to the party complaining or to his agent or attorney; and in case such amends be not accepted, or in case no tender has been made, plead the general issue to any action to be thereafter brought, and give such tender or any other special matter in evidence; and if the plaintiff in any such action shall not, at the trial thereof, recover a verdict for more than the amount of such tender, the defendant in such action shall be entitled to his costs of suit, and to the like remedy for the recovery thereof, as though a verdict had passed against the plaintiff.

20. If in any case such board, commissioners, surveyors, contractors or other persons, shall neglect to tender any amends, or shall have tendered insufficient amends before action brought, they or he may, by leave of the Court wherein such action shall be brought, or of a Judge of the Supreme Court, at any time before the trial thereof, pay into Court such money as they shall see fit; whereupon such proceedings, orders and judgments shall be had, made or given to and by such Court or Judge as in other actions where the defendant is allowed to pay money into Court.

21. Any person who shall at any time excavate, dig up, or otherwise damage or remove, or carry away, any portion of any road, street, highway, bridge, public wharf, public beach or breakwater, without the consent,

in St. John's, of the Chairman of the Board of Works or the Municipal Council, and in the other districts, without the consent of the Chairman of the Road Boards therein, shall forfeit and pay a fine not exceeding twenty dollars for each offence, to be recovered in a summary manner before any stipendiary magistrate or justice of the peace, and by the distress and sale of the offender's goods and chattels; and in default of any sufficient distress being found, such offender shall be imprisoned for any time not exceeding fourteen days.

**22** Any person who, after being duly notified by the Chairman of the Board of Works, Municipal Council, or by the Chairman of any Road Board, shall wilfully continue to encroach on or obstruct, or shall again encroach on or obstruct any of the public roads, streets, highways or bridges, or any Crown or other lands lawfully reserved for roads, streets or highways, or any person who, having been duly notified by the Surveyor General of his encroachment and obstruction, and having been required to remove the same, shall wilfully continue to encroach upon or obstruct any of the public beaches, landing places or breakwaters in this colony, or the way thereto, may be summoned before any stipendiary Magistrate, or two or more Justices of the Peace, who shall decide in a summary way a complaint in the name of the Surveyor General, Chairman of the Board of Works, Chairman of the Municipal Council, or Chairman of such Road Board, as the case may be, concerning such encroachment or obstruction; and, on being satisfied by proof thereof, such Magistrate or Justice of the Peace may adjudge the offender to pay a penalty not exceeding twenty dollars, together with the costs and expenses of removal of any such encroachments or obstructions, which said penalty and costs may be levied by distress and sale of the offender's goods and chattels.

**23.** Such encroachments or obstructions as aforesaid may be removed by the order of such stipendiary Magistrate or Justice; or the Surveyor General, Chairman of the Board of Works, Municipal Council, or the Chairman of either of the said Road Boards within their respective districts, may cause the same to be removed: Provided that this section and the section next preceding, shall not apply to a case of disputed right of way over private property.

**24.** It shall be lawful for the Governor in Council at such times as may be necessary, to set apart sufficient portions of any two of the public streets or firebreaks, in the town of St. John's, for the purpose of public markets.

**25.** Whenever it shall become necessary, for the construction or carrying out of any public work in this colony, to take possession of or appropriate any piece or parcel of land, being private property, compensation shall be made therefor in the same way, and subject to the same conditions and proceedings as provided in sections 17, 18, 19 and 20 of

this chapter; and no plaintiff in any action or suit against the Board of Works, Municipal Council or any Road Board, or against any person acting under the authority of such Council or Board, for any act done in pursuance of this chapter, shall recover a verdict or judgment in such action or suit, unless it shall appear to the Judge at the trial that the plaintiff in such action was prevented from having his claim adjudicated upon, as aforesaid, by the wrongful act of the defendant board or person.

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# CHAPTER 19.

## Of Ferries.

SECTION
1.—Governor may establish ferries.
2.—Courts of Sessions may make rules for ferries, &c.
3.—Justices may suspend ferrymen in certain cases.
4.—Provision in case of ferry boat being taken away or injured.
5.—Penalties—how recovered.

**1.** The Governor in Council may establish such ferries over straits, rivers, bays, harbors and creeks within the colony as may be provided by the Legislature, and appoint persons to serve as ferrymen under such rules and for such fees, to be paid by the parties using such ferries, as may be prescribed and settled in the manner hereinafter provided; and any person who shall accept the place and duty of ferryman, and shall refuse or neglect to comply with and observe the several articles, rules and clauses contained in the rules and regulations prescribed for his guidance in that behalf, shall forfeit a sum not exceeding eight dollars.

**2.** The Court of Sessions nearest to the place where any ferry shall be established may frame rules for the management thereof, and fix a rate of fees to be paid for the transit of passengers, animals, vehicles and articles of any description thereat; provided that such rules and rates respectively shall be subject to the approval of the Governor in Council before the same shall be put in operation.

**3.** On complaint being made to the Justices in session of any improper conduct or neglect of duty on the part of any ferryman over whom they shall have jurisdiction, such as in the opinion of the Justices to require the suspension and dismissal of such ferryman, the Justices shall take the deposition of the party complaining, or of any other person, with respect to the subject matter of such complaint, and transmit the same to the Colonial Secretary with their report thereon, and may in the meantime suspend such ferryman and appoint some other person to perform his duties until the decision of the Governor in Council upon the matters aforesaid shall have been received.

4. On complaint on oath being made to any justice near where any ferry shall have been established, of any person having wilfully and maliciously taken away, damaged or destroyed the boat of the ferryman at such place, such justice shall issue his warrant for the apprehension of the offender, and upon hearing the parties, make such order for the restoration of such boat, and for the reparation of any damage done to the same, as in that behalf may be just; and in the event of a refusal to comply with such order, shall imprison the party refusing obedience thereto for any time not exceeding thirty days.

5. All penalties imposed by this chapter may be sued for and recovered in a summary manner before any one of Her Majesty's justices, and shall be levied, together with costs, by warrant of distress on the goods and chattels of the party convicted.

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# CHAPTER 20.

## Of Public Wharves.

SECTION
1.—Justices may make rules, &c., and affix fees, &c.
SECTION
2.—Rules to be posted up near wharf.

1. The Justices, in session, in the several districts of this colony, may make and establish rules and regulations for the control and management of public wharves within their several jurisdictions, and fix and establish fees and rates of wharfage and penalties for violation of same; and such rules and regulations, fees, rates and penalties, after being approved of by the Governor in Council, shall have the force and effect of law.

2. Such rules and regulations shall be kept posted up in some conspicuous place adjacent to the wharf for which the same shall be prescribed.

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# CHAPTER 21.

## Of the Postal Service.

SECTION
1.—Short title.
2.—Interpretation clause.
3.—Post Office department under Postmaster General.
4.—Postmaster General appointed by Governor in Council.
SECTION
5.—Inspector of Post Offices.
6.—Postmaster General to give bonds.
7.—Appointment, suspension or removal of officials.
8.—Postmaster General may require oath or declaration from postmasters or others.

SECTION
9.—Postmaster General shall pay or deliver money or property stolen from mails.
10.—Postmaster General may require new bond if surety desires to be released.
11.—Payment subsequent to new bond to go to pay balance due by postmaster.
12.—No suit against surety to be taken after two years from death or resignation of postmaster.
13.—Postmaster General may appoint times for rendering of accounts.
14.—Penalty for neglect by postmaster to render accounts.
15.—No postmaster to receive emolument other than fixed salary.
16.—No allowance for extra services.
17.—Powers of Postmaster General.
18.—Regulations of Postmaster General to have effect from publication in *Royal Gazette*.
19.—Bonds required by regulations to be valid.
20.—Rates of postage.
21.—Postage stamps.
22.—Double postage.
23.—Newspapers free.
24.—Exemptions from postage.
25.—Books, &c., postage.
26.—Rates for officers, soldiers and seamen in Her Majesty's service.
27.—Letters containing dutiable articles not to be forwarded outside colony.
28.—Postage marked on letter shall be held to be true postage.
29.—Mode of recovery.
30.—Postmaster or carrier not bound to give change.
31.—Compensation to masters of vessels for conveyance of letters.
32.—Exclusive right to provide for conveyance of letters to be in the Postmaster General; exceptions.
33.—Letters may be re-directed.
34.—Letters sent in violation of this chapter may be seized.
35.—Postmaster General may establish branch offices.
36.—Letter or other article when deposited in post office shall cease to be the property of sender.
37.—Dead letters to be sent to the Post Office Department.
38.—Postmaster General may detain mail matter suspected to contain contraband goods.
39.—Ferrymen shall convey couriers, &c., without undue delay.
40.—Postmasters whose salaries not fixed may be paid percentage.
41.—Indemnity up to fifty francs for loss of registered article.
42.—Before making contract for mail carrying, Postmaster General to give public notice of four weeks.
43.—Not compelled to accept lowest tender.
44.—Postmaster may be allowed to transport mail.
45.—Tenders for carrying a mail to be accompanied by a written security.
46.—Postmaster General may submit contracts of less than $100 to public competition.
47.—No contract to be made with person who has endeavoured to prevent another from tendering.
SECTION
48.—Postmaster General to keep record of tenders.
49.—Temporary contracts.
50.—Post Office Money Orders system.
51.—Post Office Savings' Bank.
52.—Postmasters may receive deposits for transmission to Central office.
53.—Deposits to be entered in a depositor's book and attested.
54.—Money deposited under this chapter not liable to seizure.
55.—Repayment of deposit to be made on demand without delay.
56.—Names of depositors not to be disclosed.
57.—Moneys deposited to be paid to Receiver General.
58.—Interest to be three per cent.
59.—On the 30th of June in every year interest to become principal.
60.—Postmaster General may issue certificate of deposit for sums not less than $100.
61.—Regulations for superintending and inspecting depositors' accounts.
62.—Monthly returns to Receiver General.
63.—Annual account to be laid before Legislature.
64.—Postmaster General to make annual reports to Governor.
65.—Penalties for the stealing or destruction of post letters.
66.—Stealing from post letter, felony.
67.—Penalty for stealing letter-bag or stopping mail with intent to rob or search.
68.—Penalty for unlawfully opening letter-bag.
69.—Penalty for stealing parcel sent by post.
70.—Penalty for receiving letter, &c., knowing same to be stolen.
71.—Issuing unlawfully a money order, felony.
72.—Penalty for forging, counterfeiting or imitating postage stamps.
73.—Penalty for forging, imitating or counterfeiting money order, &c.
74.—Penalty for destruction, detention or delaying of any mailable article.
75.—Penalty for placing explosive or dangerous substances in or with mailable matter.
76.—Penalty for enclosing written matter in packet or parcel.
77.—Penalty for removing postage stamps.
78.—Penalty for destruction of letter-bag.
79.—Penalty for misconduct by mail carriers.
80.—Penalty for issuing money order without having first received purchase money.
81.—Penalty for destruction by postmasters.
82.—Penalty for the pledging of postage stamps by postmaster.
83.—Penalty for the transmission of immoral or obscene books, &c.
84.—Violation of regulations under this chapter a misdemeanor.
85.—Using money entrusted to others, embezzlement.
86.—No person to sell postage stamps, &c., unless licensed.
87.—Penalty for injury to letter or pillar boxes.
88.—Penalty for attempting to use a postage stamp or wrapper used before.
89.—Penalty for placing the "Post Office" on a house or premises without authority.
90.—Mode of trial of indictable offences.
91.—Indictment of accessories before and after the fact.

SECTION
92.—Offences in respect of post letter-bags or mailable matter.
93.—Postmaster General may compromise any action or suit commenced under his authority.
94.—Mode of recovery of penalties.
95.—One witness sufficient evidence for the recovery of postage.
96.—Actions against postmasters and sureties for moneys due Crown.
97.—Suits begun by a Postmaster General may be continued by his successors.
SECTION
98.—Bonds may extend to larceny or destruction of articles, though not belonging to the Crown.
99.—Governor in Council may alter name of settlement, village or town.
100.—Provisions of the "Customs' Act" to apply to post office officials and suits under this chapter.
101.—Postmaster General may make rules and regulations for carrying into effect this chapter.

**1.** This chapter may be cited as "The Post Office Act, 1891."

INTERPRETATION.

**2.** In this chapter, unless the subject or context otherwise requires,

(*a.*) The expression "letter" includes packets of letters

(*b.*) The expression "postage" means the duty or sum chargeable for the conveyance of post letters and all other mail matter and other things by post.

(*c*) The expression "foreign country" means any country not included in the dominions of Her Majesty Queen Victoria.

(*d.*) The expression "foreign postage" means the postage on the conveyance of letters, packets or other things, within any foreign country or payable to any foreign government.

(*e.*) The expressions "colonial," "local," or "inland" postage means the postage on the conveyance of letters, packets, and other things by post within Newfoundland and its dependencies, or by Newfoundland mail packet.

(*f.*) The expressions "mail," or "post," include every conveyance by which post letters are carried, whether it be by land or water.

(*g.*) The expression "British packet postage" means the postage due on the conveyance of letters by British packet boats, between the United Kingdom and British North America; and the expressions "British postage" includes all postage which is not foreign, colonial or Newfoundland.

(*h*) The expression "employed in the Newfoundland Post Office" applies to any person employed in any business of the Post Office of Newfoundland.

(*i.*) The expression "post letter" means any letter transmitted or deposited in any post office to be transmitted by the post or delivered through the post, or deposited in any box put up

anywhere under the authority of the Postmaster General to be transmitted or delivered through the post; and a letter shall be deemed a post letter from the time of its being so deposited or delivered at a post office, or delivered to the person to whom its addressed; a delivery to any person authorized to receive letters for the post shall be deemed a delivery at the post office; a delivery of any letter or other mailable matter at the house or office of the person to whom the letter is addressed, or to him, or to his servant or agent, or other person considered to be authorized to receive the letter or other mailable matter, according to the usual manner of delivering that person's letters, shall be a delivery to the person addressed.

(*j.*) The expression "mailable matter" includes any letter, packet, parcel, newspaper, book or other thing which by this chapter, or by any regulation made in pursuance of it may be sent by post;

(*k.*) The expression "post letter bag" includes a mail bag or box, or packet or parcel, or other envelope or covering in which mailable matter is conveyed, whether it does or does not actually contain mailable matter;

(*l.*) The expression "Post Office" means any building, room, street letter box, receiving box or other receptacle or place where post letters or other mailable matter are received or delivered, sorted, made up, or despatched;

(*m*) The expression "between," when used with reference to the transmission of letters or other things, applies equally to such transmission from either place to the other.

(*n.*) The expressions, "The United Kingdom" means Great Britain and Ireland; "Canada" means the Dominion of Canada; and "The United States" means the United States of America.

(*o*) The expressions "The Colony" and "local" means Newfoundland and its dependencies.

(*p.*) The expression "Postmaster" shall include Postmistress, and means any person in charge of a Post office.

**3**. There shall be at St. John's a Post Office department for the management and superintendence of the Postal service, under the direction of a Postmaster General.

**4**. The Postmaster General shall be appointed by the Governor in Council.

5. The Governor in Council may appoint an officer who shall be called the Inspector of the Post Office department of Newfoundland, whose duties may be prescribed by the Governor in Council from time to time.

6. The Postmaster General, on his appointment to office, shall give bond in the sum of two thousand five hundred dollars, with two sureties in the sum of five hundred dollars each; and Inspectors of Post Offices shall give bonds in such sums, and with such sureties, as may be directed by the Governor in Council.

7. The Governor in Council may (*a.*) appoint, suspend and remove all necessary officials for carrying out the Postal service.

(*b.*) The Postmaster General shall, upon the appointment of any postmaster, require and take of such postmaster a bond, with good and approved sureties, in such penalty as he deems sufficient, conditioned for the faithful discharge of all the duties of such postmaster required by law, or which are required by any instruction or regulation, or general rule for the government of the Post Office.

8. The Postmaster General may require any postmaster or assistant in any post office, mail contractor or other person in the employment or service of or undertaking to perform any duty or work for the Post Office department, to make and sign before a justice of the peace, an oath or declaration in the following form, or to the like effect, that is to say:—

"I, *(insert the name of the person and the capacity in which he is employed in or by the Post Office department)*, do solemnly and sincerely promise and swear (or declare, *if the person is one entitled to declare instead of taking an oath in civil cases)* that I will faithfully perform all the duties required of me by my employment in the service of the Post Office, and will abstain from everything forbidden by the laws of the establishment and government of the Post Office department of Newfoundland: So help me God."

Signature of person.

Sworn (or declared) before me, at ,
the day of , A. D. .

Signature of J. P.

9. The Postmaster General shall pay over or deliver to such person or persons as he considers to be the rightful owner or owners thereof, upon satisfactory evidence of claim, any sum of money or other property stolen or lost from the mails, which is by the Postmaster General recovered from the thief or thieves, or otherwise comes into his possession.

10. When any surety of a postmaster notifies to the Postmaster General his desire to be released from his suretyship, or when the Postmaster

General deems it necessary, he may require such postmaster to execute a new bond, with sureties, which bond, when accepted by the Postmaster General, shall be as valid as the bond given upon the original appointment of the postmaster; and the sureties in the prior bond shall be released from responsibility for all acts or defaults of the postmaster done or committed subsequent to the acceptance of the new bond, and the date of the acceptance shall be duly endorsed on such prior bond.

**11**. Payments made by such postmaster subsequent to the acceptance of a new bond, shall be applied first to the discharge of any balance due by him at the time of such acceptance, unless the Postmaster General otherwise directs.

**12**. No suit shall be instituted against any surety of a postmaster after the lapse of two years from the death, resignation or removal from office of such postmaster, or from the date of the acceptance of a new bond from such postmaster.

**13**. The Postmaster General may appoint the periods at which each postmaster or person authorised to receive postage, or any class or number of postmasters or persons respectively, shall render his or their accounts, and the form and manner in which such accounts shall be kept and rendered; and if any postmaster or any such person neglects or refuses to render his accounts, and to pay over to the Postmaster General the balance due by him at the end of any such period, the Postmaster General may cause a suit to be commenced against the person so neglecting or refusing.

**14**. If any postmaster neglects to render his accounts for one month after the time, or in the form and manner prescribed by the Postmaster General's instructions and regulations, he shall forfeit double the value of the postages which have arisen at the same office in any equal portion of time previous or subsequent thereto, which shall be recoverable by the Postmaster General in an action of debt on the bond against the postmaster and his sureties, and for which the sureties shall be liable.

**15**. No postmaster shall, under any pretense whatsoever, have or receive, or retain for himself, any greater or other allowance or emolument of any kind, in respect of his office, than the amount of his salary and allowance as fixed and authorized by law or by the Governor in Council.

**16**. No allowance or compensation shall be made to any clerk or other officer in the post office department by reason of the discharge of duties of any other clerk or officer in the same department; and no allowance or compensation shall be made for any extra service whatsoever which any such clerk or officer is required to perform.

**17**. The Postmaster General may, subject to the provisions of this chapter and the approval of the Governor in Council—

(*a.*) Establish and close post office and post routes;

(*b.*) Suspend any postmaster or other officer or servant of the post office;

(*c*) Enter into and enforce all contracts relating to the conveyance of the mails or other business of the post office, subject to the provisions hereinafter enumerated;

(*d.*) Make regulations declaring what shall and what shall not be deemed to be mailable matter for the purposes of this chapter, and for restricting within reasonable limits the weights and dimensions of letters and packets and other matters sent by post, and for prohibiting and preventing the sending of explosive, dangerous, contraband or improper articles, obscene or immoral publications, or obscene or immoral post cards; and for marking on the covering of letters, circulars or other mail matter suspected to concern illegal lotteries, so-called gift concerts, or other illegal enterprises of like character, offering prizes or concerning schemes devised or intended to deceive or defraud the public, for the purpose of obtaining money under false pretenses, whether such letters, circulars or other mail matter are addressed to or received by mail from places within or without Newfoundland, a warning that they are suspected to be of a fraudulent character;

(*e.*) Establish the rates of postage on all mailable matter, not being letters, newspapers or other things hereinafter specially provided for, and prescribe the terms and conditions on which all mailable matter other than letters shall, in each case or class of cases, be permitted to pass by post, and authorize the opening thereof for the purpose of ascertaining whether such conditions have been complied with;

(*f.*) Cause to be prepared and distributed postage and registration stamps necessary for the pre-payment of postages and registration charges under this chapter; also, stamped envelopes for the like purpose, and post cards and stamped post bands or wrappers for newspapers or other mailable articles not being post letters;

(*g.*) Make and give effect to any arrangements which are necessary to be made with the Government or with the Postal authorities of the United Kingdom or of any British possession, or of any foreign country, with regard to the collecting and accounting for postage, the transmission of mails, and other matters connected with posts and postal business, and the remuneration or indemnity to be paid or received under any such arrangement;

(*h.*) Make arrangements for refunding such postage as is, from time to time, paid by Her Majesty's military or naval authorities on official correspondence passing between the several stations of Her Majesty's military and naval forces in Newfoundland;

(*i.*) Make orders and regulations concerning the money order system; and the issuing and paying of post office money orders in Newfoundland, and when he deems it expedient, arrange for the exchange of such money orders with the United Kingdom, or any British possession, or foreign country, on such terms and conditions as he agrees upon, and as are set forth in the regulations relating to the same; and all orders and regulations so made by him, shall be binding and conclusive upon the persons in favor of whom such money orders are issued, and the payees thereof and all persons interested through or claiming under them, and upon all other persons whomsoever;

(*j.*) Make and alter rules and orders for the conduct of and management of the business and affairs of the department, and for the guidance and government of the postmasters and other officers and servants of the Post Office in the performance of their duties;

(*k*) Prescribe and enforce such regulations as to letters directed to be registered, as to him seem necessary, in respect to the registration of letters and other matter passing by mail, as well between places in Newfoundland as between Newfoundland and the United Kingdom, or any British possession, or any foreign country, and to the charge to be made for the same; and also in respect to the registration by the officers of the post office of letters unquestionably containing money or other valuable enclosure, when posted without registration by the senders of the same, and the imposing a registration fee upon such letters;

(*l.*) Decide all questions which may arise as to what shall be deemed to be a letter or letter packet, newspaper, periodical or other article of mailable matter, admitted to pass by post under this chapter, and as to the rate of postage to which it is consequently liable;

(*m.*) Sue for and recover all sums of money due for postage or for penalties under this chapter, or due by any postmaster or his sureties;

(*n.*) Establish and provide street letter boxes or pillar boxes, or boxes of any other description, for the receipt of letters and such other mailable matter as he deems expedient, in the streets of any city or town or elsewhere in Newfoundland, or at any railway station or other public place where he considers such boxes necessary;

(*o.*) Grant licenses, revocable at pleasure, to agents other than postmasters, for the sale to the public of postage stamps, post cards and stamped envelopes, and stamped post bands or wrappers, and allow to such agents a commission not exceeding five per cent. on the amount of their sales;

(*p.*) Impose, with the approval of the Governor in Council, pecuniary penalties not exceeding two hundred dollars for any one offence on persons offending against any such regulation as aforesaid, whether they are or are not officers of the post office;

(*q.*) Make such regulations as he deems necessary for the due and effective working of the Post Office and postal business and arrangements, and for carrying this chapter fully into effect;

(*r.*) Every such regulation shall have force and effect as if it formed part of the provisions of this chapter;

(*s.*) Make such regulations as he deems necessary for the establishment of a parcel post from Newfoundland to the United Kingdom, and through the United Kingdom to countries having a parcel post with the United Kingdom, and to the Dominion of Canada and the United States of America, or any other country, and for the registration of all parcels sent by the said parcel post;

(*t.*) Make such rules and regulations respecting the money order system from time to time, as he deems necessary, and arrange as may be required for the exchange of the money order system with any other country.

**18.** Every regulation made by the Postmaster General under this chapter, other than those made solely for the guidance and government of the officers or other persons employed in the Postal Service, which may be communicated by departmental order or otherwise, as the Postmaster General sees fit, shall have effect from and after the day on which the same is published in the *Royal Gazette,* or from and after such later day as is appointed for the purpose in such regulation, and during such time as is therein expressed, or if no time is expressed for that purpose, then until the same is revoked or altered.

**19.** Every bond or security required or authorized by any such regulation, or by any order of the Postmaster General, or any matter relative to the Post Office, or to observance of any provisions of this chapter, or any regulation or order made under it, shall be valid in law, and may be enforced according to its tenor or breach of the conditions thereof.

**20.** The colonial postage on prepaid letters and letter packets posted and transmitted within the colony, shall be at the rate of three cents per

one oz. weight; and so on at the rate of three cents for every additional one oz. weight.

(*a.*) Letters posted in St. John's, for city delivery, will be subject to a rate of postage of one cent per one oz. weight, or fraction thereof;

(*b.*) Inland post cards will be transmitted at one cent each.

(*c.*) A letter or other mailable article posted unpaid, will be chargeable on delivery to the addressee with double postage; if insufficiently paid, such letter will be chargeable with double the amount of the deficiency.

(*d.*) The registration fee on local letters or other mailable article shall be three cents.

(*e.*) All letters or packets containing gold, silver, or other money, or jewels or precious articles, and transmitted by post within the colony, must be registered by the sender, otherwise double registration fee will be taxed upon delivery to the receiver.

**21.** The pre-payment of letters and other mail matter can only be effected by means of Newfoundland postage stamps attached thereto.

**22** Letters posted after the hour stated for closing any mail will be subject to double postage; the time during which such letters can be received shall be subject to such regulations as the Postmaster General may deem necessary.

**23.** Newspapers or periodicals, local and foreign printed, shall be sent free of postage to and from places within this colony, if under four ounces weight; if they exceed four ounces such newspaper and periodical will be charged at book rate:

(*a.*) Such newspaper and periodical must be known and recognized as a newspaper or periodical in the generally received sense of the terms, and published regularly at intervals of not more than one month.

(*b.*) The full title, place and date of publication, and the distinguishing number of the issue must be printed at the top of the first page, and also on any paper purporting to be a supplement to such newspaper and periodical and sent with it.

**24.** The following matter shall be exempt from local postage, namely:
(1.) Letters and mailable matter addressed to or sent from the Governor or the following departments and officers, that is to say:—The Colonial Secretary, the Attorney and Solicitor Generals, the Customs, the Surveyor General, the Financial Secretary, the

Board of Works, the Post Office, the Chief Clerk of Supreme Court and Superintendent of Police.

(2.) Letters addressed to or coming from the President or any member of the Legislative Council, the Speaker or any member of the House of Assembly during a session of the Legislature: Provided that the initials of the chief officer, secretary or clerk of the department or of either branch of the Legislature, or of the writer, if a member of the Legislature, as the case may be, shall form part of the address of such letters or other mailable matters.

**25.** The following articles posted for transmission within the colony, will be liable to postage of one cent per two ounces or fraction thereof, viz.:—Books, pamphlets, occasional publications, printed circulars, prices current, hand-bills, book and newspaper manuscripts, printers' proof sheets, whether corrected or not; maps, prints, drawings, engravings, lithographs, photographs, when not on glass or in cases containing glass; sheet music, whether printed or written; documents, wholly or partly printed or written, such as deeds, insurance policies, or other documents of like nature; packages of seed, cuttings, bulbs, roots, scions or grafts, patterns or samples of goods or merchandize; also eye-glasses, microscopic slides, and spectacles, when properly put up.

**26.** Every non-commissioned officer, soldier or seaman actually employed in the service of Her Majesty the Queen of Great Britain, is entitled to send and receive letters not exceeding the weight of half an ounce for a postage of one penny sterling throughout the British empire; but if any such letters have to pass through a foreign country they will be subject to the additional foreign postage thereby incurred.

**27.** No letter containing gold or silver money, jewels or precious articles, or any article whatever liable to Customs' duties, whether registered or not, can be forwarded by post to any country outside or beyond Newfoundland.

**28.** The postage marked on any letter or other mailable matter shall be held to be the true postage due thereon, and the person signing or addressing it shall be held to be the sender until the contrary is shown.

**29.** All postage shall be recoverable with costs, by action in any court of competent jurisdiction.

**30.** No postmaster or letter carrier shall, as respects any letter or other mailable matter delivered by him on which any postage is payable, be bound to give change, but the exact amount of the postage so payable shall be tendered or paid to him in current coin; and in like manner the exact value in current coin of any postage stamps, stamped envelopes,

post cards or post bands or wrappers, when purchased from any postmaster, shall be tendered or paid to him at the time of purchase thereof.

**31.** The Postmaster General may compensate masters of vessels, not being post office packets, by a payment not exceeding two cents for each letter conveyed by such vessels between Newfoundland and other countries.

**32.** Subject always to the provisions and regulations aforesaid, and the exceptions hereinafter made, the Postmaster General shall have the sole and exclusive privilege of conveying, receiving, collecting, sending and delivering letters within and from Newfoundland; and, except in the cases hereinafter mentioned any person who collects, sends, conveys or delivers, or undertakes to convey or deliver any letters within and from Newfoundland, or who receives or has in his possession any letter for the purpose of conveying or delivering it, otherwise than in conformity with this chapter, shall, for each and every letter so unlawfully conveyed or undertaken to be conveyed, received, delivered or found in his possession, incur a penalty not exceeding twenty dollars.

(1.) Such exclusive privilege, prohibition and penalty shall not apply to—

(*a.*) Letters sent by private individuals to be mailed at the first post office;

(*b.*) Letters sent by a messenger on purpose, concerning the private affairs of the sender or receiver;

(*c.*) Letters lawfully brought into the colony and immediately posted at the nearest post office;

(*d.*) Letters of merchants, owners of merchants vessels or of the cargo or loading therein, sent by such vessel or by any person employed by such owners for the carriage of such letters according to their respective addresses, and delivered to the persons to whom they are respectively addressed, without pay, hire, reward, advantage or profit for so doing;

(*e.*) Letters concerning goods or merchandize sent or to be sent by common known carriers to be delivered with the goods to which such letters relate, without hire or reward, profit or advantage for receiving or delivering them.

(*f.*) Nothing herein contained shall authorize any person to collect any such excepted letters for the purpose of sending or conveying them as aforesaid, or shall oblige any person to send any newspaper, pamphlet or printed book by post.

**33.** Letters may be re-directed to places within the colony, if not taken out of the post office, and be then forwarded without additional postage.

**34**. Any person may, and every officer or person employed in the post office or in the collection of the revenue of Newfoundland, shall seize any letters conveyed received, collected, sent or delivered in violation of this chapter, and take them to the nearest post office, and give such information to the postmaster as he is able to give and as is necessary for the effectual prosecution of the offender; and the letters shall also be chargeable with letter postage.

**35**. The Postmaster General may, with the consent of the Governor in Council, when in his judgment the public interest or convenience requires it, establish one or more branch post offices to facilitate the operation of the post office in any city or place which in his opinion requires any such additional accommodation for the convenience of the inhabitants; and he may prescribe the rules and regulations for the branch post offices established by virtue of this chapter; and no additional postage shall be charged for the receipt or delivery of any letter or packet at such branch post, except as herein otherwise prescribed.

**36**. From the time any letter, packet, chattel, money or thing is deposited in the post office for the purpose of being sent by post, it shall cease to be the property of the sender, and shall be the property of the person to whom it is addressed, or the legal representative of such person; and the Postmaster General shall not be liable to any person for the loss of any letter, packet or other thing sent by post:

(*a*.) No letter, packet or other mailable matter shall, while in the post office or in the custody of any person employed in the Newfoundland post office, be liable to demand, seizure or detention under legal process against the sender thereof, or against the person or legal representatives of the person to whom it is addressed.

**37**. Letters or other articles which, from any cause, remain undelivered in any post office, or which, having been posted, cannot be forwarded by post, shall, under such regulations as the Postmaster General makes, be transmitted by postmasters to the Post Office department as dead letters, there to be opened and returned to the writers or senders on payment of any postage thereon, with two cents additional on each dead letter to defray the cost of returning the same; or such dead letters may, in any case or class of cases, be otherwise disposed of as the Postmaster General directs.

(*a*.) If any such dead letter, of which the writer or sender cannot be ascertained or found, contains money, the Postmaster General may appropriate it as postal revenue, keeping an account thereof; and the amount shall be paid by the Postmaster General to the rightful claimant as soon as he is found.

**38** The Postmaster General, or any postmaster by him to that effect duly authorized, may detain any post letter or other article of mail matter

suspected to contain any contraband goods, wares or merchandise, or any goods, wares or merchandize, on the importation of which into Newfoundland any duties of customs are by law payable, and suspected to have been enclosed therein and sent by post to evade payment of such duties, and forward the same to the nearest Collector of Customs, who, in the presence of the person to whom the same is addressed, or in his absence, in case of non-attendance after due notice, in writing, from such collector requiring his attendance, left at or forwarded by the post according to the address on the letter or other article of mail matter, may open and examine the same:

(*a*) If on any such examination, any contraband goods, wares or merchandize, or any goods, wares or merchandize, on the importation of which into Newfoundland any duties of customs are payable, are discovered, such collector may detain the letter or other article of mail matter and its contents for the purpose of prosecution; and if no contraband goods, wares or merchandize, or any goods, wares or merchandize, on the importation of which into Newfoundland any duties of customs are by law payable, are discovered in such letter or other article of mail matter, it shall, if the person to whom it is addressed is present, be handed over to him on his paying the postage, if any, charged thereon, or if he is not present, it shall be returned to the Post Office and be forwarded to the place of its address.

**39**. Every ferryman shall, upon request, and without delay, convey over his ferry any courier or other person travelling with the mail, and no ferryman shall detain or delay a mail on pretence of demanding toll or ferryage; any ferryman so delaying a courier or mail shall forfeit for every such offence twenty dollars.

**40**. Postmasters whose salaries are not fixed by law, may be paid by a percentage on the amount collected by them, or by such salary and allowances as the Postmaster General, having due regard to the duties and responsibilities assigned in respect to each Post Office, by regulation, determines in each case.

**41**. And whereas by article 6 of the Convention for the Universal Postal Union, concluded at Paris on the first day of June, 1878, it is provided, that: "In cases of the loss of a registered article, and except in case of *force majeure*, there is to be paid an indemnity of fifty francs to the sender, or, at his request, to the addressee, by the administration of the country in the territory or in the maritime service of which the loss has occurred, that is to say where the trace of the article has ceased."

And whereas it is necessary to make provision for the payment of such indemnity in case of such loss occurring within the colony. It is therefore enacted as follows:—

In case of the loss within this colony, or in its maritime service, of an article duly registered according to the provisions of the said Convention for the Universal Postal Union and the laws and regulations relating to the Postal service, the general funds of this colony shall be liable for, and there shall be paid therefrom to the sender, or at his request to the addressee, an indemnity not exceeding an amount in dollars equivalent to fifty francs for each registered article so lost, subject to all the provisions contained in the said Convention and the regulations made by virtue of the same.

MAIL CONTRACTS AND CONTRACTORS.

**42.** The Postmaster General, before entering into any contract for carrying the mail involving an annual cost of more than one hundred dollars, shall give at least four weeks previous notice by advertisement in such newspaper or newspapers as he selects in each case, and by public notices put up in the principal post offices concerned in such contract, that such contract is intended to be made, and of the day on which tenders for the same will be, by him, received.

(*a.*) The contracts, in all cases in which there is more than one tender, shall be awarded to the lowest tenderer who offers sufficient security for the faithful performance of the contract, unless the Postmaster General is satisfied that it is for the interest of the public not to accept the lowest tender.

(*b.*) The Postmaster General shall not be bound to consider the tender of any person who has wilfully or negligently failed to execute or perform a prior contract; but in all cases where he does not give the contract to the lowest tenderer, he shall report his reasons therefor to the Governor in Council.

**43.** When, in the opinion of the Postmaster General, the lowest tender received after public advertisement for the performance of a mail contract is excessive, he shall not be compelled to accept the said tender, but may, in his discretion, either re-advertise the said contract for further competition, or offer to the persons from whom tenders have been received, each in his turn, beginning with the lowest, such sum as he deems a reasonable and sufficient price for the said contract, and may enter into a contract with such of the said persons as will accept such offer.

**44.** The Postmaster General may, in his discretion, authorize and allow a postmaster to undertake and perform a contract for the transportation of a mail, subject to the regulations applying to all mail contracts, when, in his opinion, the interests of the public service will be thereby promoted

**45.** Every tender for carrying the mail shall be accompanied by an undertaking, signed by one or more responsible persons, to the effect that he or they undertake that the tenderer will, if his tender is accepted,

enter into an obligation, within such time as is prescribed by the Postmaster General, with good and sufficient sureties, to perform the service proposed—

(*a*) If, after the acceptance of a tender and notification thereof to the tenderer, he fails to enter into an obligation within the time prescribed by the Postmaster General, with good and sufficient sureties for the performance of the service, the Postmaster General shall proceed to contract with some other person for the performance of the said service, and may forthwith cause the difference between the amount contained in the tender and the amount for which he has contracted for the performance of the said service, for the whole period thereof, to be charged up against the said tenderer and his surety or sureties; and the same may be immediately recovered in an action of debt, in the name of the Postmaster General, against the tenderer and his sureties, or any of them, and when recovered shall form part of the postal revenue.

**46.** The Postmaster General may, subject to the approval of the Governor in Council, submit contracts for mail transportation, involving an annual expense of less than one hundred dollars, to public competition in the manner and form prescribed for contracts of a greater annual charge, or he may direct an agent to receive tenders for, and execute such contracts on his behalf, or he may in special cases, conclude such contracts by private agreement when he conceives the public interest will be promoted by such a course; but he shall not pay under any such contract made by private agreement, a higher rate of annual payment for the services to be performed than is ordinarily paid for services of a like nature under contracts made after public advertisement.

**47.** No contract for carrying the mail shall knowingly be made by the Postmaster General with any person who has entered into any combination, or proposes to enter into any combination, to prevent the making of any tender for a mail contract by any other person, or who has made any agreement or has given or performed or promised to give or perform any consideration whatever, or to do or not to do any thing whatever, in order to induce any person not to tender for a mail contract.

**48.** The Postmaster General shall keep recorded, in a book, a true and faithful abstract of tenders made to him for carrying the mail, embracing as well those which are rejected as those which are accepted; the said abstract shall contain a description of each contract advertised for public competition, the dates of the tenders made, the dates at which they were received by the Postmaster General, the names of the persons tendering, the terms on which they propose to carry the mail, the sum for which it is offered to contract, and the length of time the agreement will continue; and the Postmaster General shall also put on file and preserve

the originals of the propositions of which abstracts are here directed to be made.

**49** The Postmaster General may make temporary contracts for such services until a regular letting in the form prescribed can take place.

### Post Office Orders

**50**. A Post Office Money Order system for the issue and exchange of money orders within the colony, and with the United Kingdom, and with British possessions, and also with foreign countries, may be established, and shall be under the control and management of the Postmaster General.

### Post Office Savings' Bank.

**51**. The Postmaster General may, with the consent of the Governor in Council, establish a system of Post Office Savings' Banks in connection with a central Savings' Bank, established as a branch of the Post Office department at the seat of Government.

**52**. The Postmaster General may, with the consent of the Governor in Council, authorize and direct such postmasters as he thinks fit, to receive deposits for remittance to the Central office, and to repay the same, under such regulations as he, with the sanction of the Governor in Council, prescribes in that respect.

**53**. Every deposit received by any postmaster appointed for that purpose, shall be entered by him at the time in the depositors' book, and the entry shall be attested by him and by the dated stamp of his office; and the amount of such deposit shall, upon the day of such receipt, be reported by such postmaster to the Postmaster General, and the acknowledgment of the Postmaster General, signified by the officer whom he appoints for the purpose, shall be forthwith transmitted to the depositor.

(*a*.) Such acknowledgment shall be conclusive evidence of the claim of the depositor to the repayment of the deposit, with the interest thereon, upon demand made by him on the Postmaster General; and, in order to allow a reasonable time for the receipt of the acknowledgment, the entry, by the proper officer, in the depositor's book shall also be conclusive evidence of the title, as respects a deposit made in any part of Newfoundland for fifteen days from the making of the deposit, and if such acknowledgment has not been received by the depositor through the post within such fifteen days, and before or upon the expiry thereof he demands such acknowledgment from the Postmaster General, by letter addressed to him at St. John's, then the entry in his book shall be conclusive evidence of title during another term of fifteen days, and *toties quoties*.

(*b.*) No deposit shall be received of less amount than twenty cents, or of any sum not a multiple thereof; provided that any person desirous of saving twenty cents by means of two cents contributions for deposit in the Post Office Savings' Bank, may do so by purchasing with every two cents so saved a two-cent stamp, and affixing it to a form to be obtained at the Post Office, which will be received at the Post Office Savings' Bank for twenty cents.

**54**. No sum of money deposited under this chapter shall, while in the hands of any postmaster, or while in course of transmission to or from the Postmaster General, at any time be liable to demand, seizure, or detention, under legal process against the depositor thereof.

**55**. On demand of the depositor, or person legally authorized to claim on account of the depositor, made in such form as is prescribed in that behalf for repayment of any deposit or any part thereof, the authority of the Postmaster General for such repayment shall be transmitted to the depositor forthwith, and the depositor shall be entitled to repayment of any sum that is due to him with the least possible delay, after his demand is made at any post office where deposits are received or paid.

**56** The postmaster and other officers of the post office engaged in the receipt or payments of deposits shall not disclose the name of any depositor or the amount deposited or withdrawn, except to the Postmaster General, or to such of his officers as are appointed to assist in carrying into operation the provisions of this chapter in relation to post office savings' banks.

**57**. All money so deposited with the Postmaster General shall forthwith be paid over to the Receiver General, and shall be credited to an account called "Post Office Savings' Bank Account;" and all sums withdrawn by depositors or by persons legally authorized to claim on account of depositors, shall be repaid to them by the Receiver General, through the Post Office department, and charged to such account.

**58**. The interest payable to the persons making such deposits shall be at the rate of three per cent. per annum; but such interest shall not be calculated on any amount less than one dollar or some multiple thereof, and shall not commence until the first day of the month next following the deposit, and shall cease on the first day of the month in which such deposit is withdrawn.

**59**. On the thirtieth day of June in every year the interests on deposits shall be added to and become part of the principal money.

**60**. The Postmaster General may, with the consent of the Governor in Council, whenever it is deemed expedient, issue certificates of deposit

in sums of not less than one hundred dollars, and bearing interest at the rate of three per centum per annum, to depositors who, having like sums at the credit of their ordinary deposit accounts, desire to transfer such sums from such ordinary deposit accounts to a special deposit account represented by such certificates, and bearing the rate of interest specified therein; and such certificate shall not be transferable, but shall be evidence of the depositor's claim upon such special deposit account to the amount expressed in such certificate, with the interest due thereon, and shall be redeemable upon such previous notice as is expressed therein, and in all respects subject to such regulations as are made by the Postmaster General, with the sanction of the Governor in Council.

**61**. Except as herein otherwise specially provided, the Postmaster General may make, and, from time to time as he sees occasion, alter regulations for superintending, inspecting and regulating the mode of keeping and examining the accounts of depositors, and with respect to the making of deposits and to the withdrawal of deposits and interest, and all and other matters incidental to carrying the provisions of this chapter, in relation to post office savings' banks, into execution by him; and all regulations so made shall be binding on the persons interested in the subject-matter thereof to the same extent as if such regulations formed part of this chapter; and copies of all regulations issued under the authority of this chapter, in relation to post office savings' banks, shall be laid before the Legislature within fourteen days from the assembling of the Legislature annually.

**62**. As soon as possible after the end of each month, the Postmaster General shall make a return to the Receiver General of all money received and paid during the preceding month, and of the total amount in deposit at the end of each month, and the said Receiver General shall cause such monthly statement to be published in the *Royal Gazette* newspaper.

**63**. An annual account of all deposits received and paid under the authority of this chapter, and of the expenses incurred during the year ending the thirtieth day of June, together with a statement of the total amount due at the close of the year to all depositors, shall be laid by the Postmaster General before both houses of the Legislature within ten days after the commencement of the next following session thereof.

### POSTMASTER GENERAL'S REPORT.

**64**. The Postmaster General shall annually make to the Governor, so that they may be laid before the Legislature within ten days after the meeting thereof in each session, the following reports, which shall be made up to the thirtieth day of June then next preceding, that is to say:

*First*,—A report of the finances, receipts and expenditure of the Post Office of Newfoundland for the year ended on the thirty-first

day of December previous, in the form of a general account current, showing on the one side, the whole amount of balances due to the department from postmasters or others at the time up to which the then last report was made, the whole amount of postage that accrued within the year elapsed since such last report, and any and every other item of revenue or receipt, and, on the other side of the account, the charges and expenditures incurred by the department within the year, of every kind and nature, showing, in separate amounts, the charges for mail transportation, for salaries and commission and allowances to postmasters, for printing and advertising, and for incidental and miscellaneous items of expenditure; showing also the balances remaining due from postmasters and others at the close of such year, and showing, in the shape of a balance, what the result of the operations of the department is for the said year, whether the revenue exceeds the expenditure or the expenditure the revenue, and in either case to what amount;

*Second*,—A report showing, in detail, all payments made and charges incurred for mail transportation during the said year, stating in each case the name of the contractor or person receiving payment, the mail route, the mode and frequency of transportation, and the sums paid;

*Third*,—A report, in detail, of all charges for salaries, commissions and allowances, showing in each case the name of the person, the service or duty performed and the amount paid;

*Fourth*,—A report, in detail, of the expenditure of the department within the said year for printing and advertising, and for all incidental and miscellaneous items of disbursement, showing the sum paid under each head of expenditure and the names of the persons to whom paid;

*Fifth*,—A report of all cases occurring within the said year of the abstraction or loss of letters containing money sent through the post, showing the particulars of each case, and stating the result of the proceedings instituted therein by the department;

*Sixth*,—A report of the money order offices in operation at any time within the said year, designating in each case the situation of the office, the number and amount of orders issued and paid, and the amount of commission arising thereupon at each office respectively, distinguishing, with respect to the commission, the proportion allowed as compensation to the postmaster and the proportion accruing to the revenue in each case;

*Seventh*,—The cost of the money order system for the year to which the report relates, specifying, in detail, the disbursements for salaries, advertising, account books, printing, stationery and every other item of expenditure;

*Eighth*,—The losses, if any, sustained in conducting the money order system and how incurred;

*Ninth*,—Statement of dead letters received during the year and of their contents, valuable or otherwise, showing how such dead letters have been disposed of;

*Tenth*,—Statement of Post Office Savings' Bank transactions during the said year, and of the total amount due, at the close of the same, to all depositors

OFFENCES AND PENALTIES.

**65** Everyone who steals, embezzles, secretes or destroys any post letter is guilty of felony, and liable to imprisonment for a term not exceeding five years and not less than three years; unless such post letter contains any chattel money or valuable security, in which case the offender shall be liable to imprisonment for life, or for a term not less than five years.

**66**. Everyone who steals from or out of a post letter any chattel, money or valuable security is guilty of felony, and liable to imprisonment for life or for a term not less than five years.

**67** Everyone who steals a post letter-bag, or a post letter from a post letter-bag, or a post letter from any post office, or from any officer or person employed in the Newfoundland Post Office, or from a mail, or stops a mail with intent to rob or search the same, is guilty of felony, and liable to imprisonment for life or for a term not less than five years.

**68**. Everyone who unlawfully opens any post letter-bag, or unlawfully takes any letter or other mailable article out of such bag, is guilty of felony, and liable to imprisonment for five years

**69** Everyone who steals, embezzles or secretes any parcel sent by parcel post, or any article contained in any such parcel, is guilty of felony, and liable to imprisonment for a term not less than three years.

**70**. Everyone who receives any post letter, or post letter-bag, or any chattel, money or valuable security, parcel, or other thing, the stealing, taking, secreting or embezzling whereof is hereby declared to be felony, knowing the same to have been feloniously stolen, taken, secreted or embezzled, is guilty of felony and liable to imprisonment for any term not less than five years.

**71**. Everyone who unlawfully issues any money order with a fraudulent intent is guilty of felony, and liable to imprisonment for a term not less than three years.

**72.** Everyone who forges, counterfeits or imitates any postage stamp issued or used under the authority of this chapter, or by or under the authority of the Government or proper authority of the United Kingdom, or of any British possession, or of any foreign country, or knowingly uses any such forged, counterfeit or imitated stamp, or engraves, cuts, sinks or makes any plate, die, or other thing whereby to forge, counterfeit or imitate such stamp or any part or portion thereof; or has possession of any such plate, die, or other thing as aforesaid, except by the permission, in writing, of the Postmaster General, or of some officer or person who, under regulations made in that behalf, may lawfully grant such permission; or forges, counterfeits or unlawfully imitates, uses or affixes, to or upon any letter or packet, any stamp, signature, initials or other mark or sign purporting that such letter or packet ought to pass free of postage, or at a lower rate of postage, or that the postage thereon or any part thereof has been prepaid or ought to be paid by or charged to any person or department, is guilty of felony, and liable to imprisonment for life or for a term not less than five years.

**73.** Everyone who forges, counterfeits or imitates any post office money order, or advice of such money order, or post office savings' bank depositor's book, or authority of the Postmaster General for repayment of a post office savings' bank deposit or of any part thereof; or any signature or writing in or upon any post office money order, money order advice, post office savings' bank depositor's book, or authority of the Postmaster General for repayment of a post office savings' bank deposit or of any part thereof, with intent to defraud, is guilty of felony, and liable to imprisonment for any term not exceeding seven years and not less than two years.

**74.** Everyone who wilfully and maliciously destroys, damages, detains or delays any letter or other mailable article sent by post, is guilty of a misdemeanor.

**75.** Everyone who encloses in or with any letter, packet or other mailable matter sent by post, or puts into any post office any explosive, dangerous or destructive substance or liquid, or any matter or thing likely to injure any letter or other mailable matter, or the person of any officer or servant of the post office, is guilty of misdemeanor, unless such offence is by law constituted a crime of greater magnitude.

**76.** Every person who encloses a letter or letters, or any writing intended to serve the purpose of a letter or post card, in a parcel posted for the parcel post, or in a packet of samples or patterns posted to pass at the rate of postage applicable to samples and patterns; or encloses a letter or post card, or any writing to serve the purpose of a letter or post card, or encloses any other thing in a newspaper posted to pass as a newspaper at the rate of postage applicable to newspapers, (except in the case of the accounts and receipts of newspaper publishers, which shall be permitted

to pass folded within the newspapers sent by them to their subscribers), or encloses a letter or any writing intended to serve the purpose of a letter or post card, in any mail matter sent by post not being a letter, shall incur a penalty not exceeding forty dollars and not less than ten dollars in each case.

**77.** Everyone who, with fraudulent intent, removes from any letter, newspaper or other mailable matter sent by post, any postage stamp which has been affixed thereon, or wilfully, with intent aforesaid, removes from any postage stamp or post card, post band or wrapper which has been previously used, any mark which has been made thereon at any post office, is guilty of a misdemeanor.

**78.** Everyone who cuts, tears, rips or wilfully damages or destroys any post letter-bag, is guilty of a misdemeanor.

**79.** Everyone who, being a mail carrier or person employed to convey any mail, post letter-bag or post letters, is guilty of any act of drunkenness, negligence or misconduct, whereby the safety or punctual delivery of such mail, post letter-bag or post letters might be endangered, or, contrary to this chapter or any regulation made under it, collects, receives, or delivers any letter or other mailable matter, or neglects to use due care and diligence to convey any mail, post letter-bag or post letter at a rate of speed appointed therefor by the regulations then in force or the contract under which he acts, is guilty of a misdemeanor.

**80.** Everyone who, being a postmaster or other person authorized to issue money orders, issues any money order, unless he has previously received the purchase money or sum payable therefor, is guilty of a misdemeanor.

**81.** Every person who, being a postmaster, wilfully destroys, mutilates or obliterates, or refuses to produce or to deliver up to any inspector or other proper officer of the post office department, on demand, any book containing, or which ought to contain, the record or account of the money orders issued or paid, or of the registered letters or other business of his office, is guilty of a misdemeanor.

**82.** Everyone who, being a postmaster or other officer, agent or employee of the post office department, hypothecates, pledges or subjects to any lien in any shape or way, any postage stamps, stamped envelopes, post cards, post bands or wrappers intrusted to him for safe keeping, sale or issue to the public, or for any other purpose, or attempts to commit such offence, is guilty of a misdemeanor.

**83.** Everyone who posts for transmission or delivery by or through the post any obscene or immoral book, pamphlet, picture, print, engraving, lithograph, photograph, or other publication, matter or thing of an indecent, immoral, seditious, disloyal, scurrilous or libelous character; or any

letter upon the outside or envelope of which, or any post card or post band or wrapper upon which there are words, devices, matters or things of the character aforesaid, is guilty of a misdemeanor

**84.** Everyone who wilfully violates any regulation lawfully made under this chapter is guilty of a misdemeanor if such violation is declared to be a misdemeanor by such regulation.

**85.** Every officer of or connected with the post office who converts to his own use in any way whatsoever, or uses by way of investment in any kind of property or merchandize, or lends, with or without interest, any portion of the public moneys intrusted to him for safe keeping, transfer, disbursement, or for any other purpose, shall be deemed to have embezzled so much of the said moneys as are so taken, converted, invested, used or lent, and is guilty of a felony; and the neglect or refusal to pay over any public moneys in his hands, or to transfer or disburse any such moneys promptly, on the requirement of the Postmaster General, shall be *prima facie* evidence of such conversion to his own use of so much of the public moneys as are in the hands of such officer; and every person who advises or knowingly and wilfully participates in such embezzlement, shall for every such offence, forfeit and pay to Her Majesty a fine equal to the amount of the money embezzled, and shall be liable to imprisonment for a term not exceeding seven years and not less than three months.

**86.** No person other than a postmaster shall exercise the business of selling postage stamps, post cards, stamped envelopes, or stamped post bands or wrappers to the public, unless duly licensed so to do by the Postmaster General, and under such conditions as he prescribes; and every person who violates this provision, by selling postage stamps, post cards, or stamped envelopes, or stamped post bands or wrappers to the public without a license from the Postmaster General, shall, on summary conviction, incur a penalty not exceeding forty dollars for each offence.

**87.** Every person who wilfully or maliciously injures or destroys any street letter box, pillar box, or other receptacle established by authority of the Postmaster General for the deposit of letters or other mailable matter, is guilty of a misdemeanor and liable to fine or imprisonment or both, in the discretion of the Court.

**88.** Every person who uses or attempts to use in pre-payment of postage on any letter or mailable matter posted in Newfoundland, any postage stamp which has been before used for a like purpose, or who uses or attempts to use for the purpose of transmission by or through the post, any post card, or stamped envelope, or stamped post band or wrapper, which has been before used for a like purpose, shall incur a penalty not exceeding forty dollars and not less than ten dollars for every such offence; and the letter or other mailable matter on which such stamp has been so improperly used, and the post card, stamped envelope, or stamped post

band or wrapper so used more than once may be detained, or, in the discretion of the Postmaster General, forwarded to its destination charged with the double postage.

**89.** Every person who, without the authority of the Postmaster General,—the proof of which authority shall rest on such person,—places or permits, or causes to be placed or to remain on his house or premises the words "Post Office," or any other words or mark which imply or give reasonable cause to believe that such house or premises is a post office or a place for the receipt of letters, shall, on summary conviction, incur a penalty not exceeding ten dollars for each offence.

PROCEDURE, CRIMINAL AND CIVIL.

**90.** Every indictable offence against this chapter may be dealt with, inquired of, tried and punished, and laid and charged to have been committed, either in the district or place where the offence is committed, or in that in which the offender is apprehended or is in custody, as if actually committed therein:

(*a.*) When the offence is committed in or upon or in respect of a mail, or upon a person engaged in the conveyance or delivery of a post letter-bag or post letter, or chattel, or money, or valuable security sent by post, such offence may be dealt with and inquired of, tried and punished, and charged to have been committed as well within the district, or place in which the offender is apprehended or is in custody, as in any district, or place through any part whereof such mail, person, post letter bag post letter, chattel, money, or valuable security passed in the course of conveyance and delivery by the post, in the same manner as if it had been actually committed in such district or place.

**91.** Every accessory before or after the fact, if the offence is felony, and every person aiding or abetting, or counselling, or procuring the commission of any offence if the same is a misdemeanor, may be dealt with, indicted, tried, and punished as if he were a principal, and his offence may be laid and charged to have been committed in any district or place where the principal offender may be tried.

**92.** When an offence is committed in respect of a post letter bag, or a post letter, or other mailable matter, chattel, money, or valuable security, sent by post, the property of such post letter bag, post letter, or other mailable matter, chattel, money, or valuable security, sent by post, may in the indictment preferred against the offender, be laid in the Postmaster General; and it shall not be necessary to allege in the indictment, or to prove upon the trial or otherwise, that the post letter bag, post letter, or other mailable matter, chattel, or valuable security was of any value:

(*a.*) The property of any chattel or thing used or employed in the service of the Post Office, or of moneys arising from duties of postage, shall, except in the cases aforesaid, be laid in Her Majesty, if the same is the property of Her Majesty or if the loss thereof would be borne by Her Majesty, and not by any person in his private capacity:

(*b.*) In any indictment against any person employed in the Post Office, for any offence against this chapter, or in any indictment against any person for an offence committed in respect of any person so employed, it shall be sufficient to allege that such offender or other person as aforesaid, was employed in the Post Office at the time of the commission of such offence, without stating further the nature or particulars of his employment.

**93.** The Postmaster General, (subject to the approval of the Governor in Council), may compromise and compound any action, suit or information at any time commenced by his authority, or under his control, against any person for recovering any pecuniary penalty incurred under this chapter, on such terms and conditions as he in his discretion thinks proper, with full power to him, or any of the officers or persons acting under his orders, to accept the penalty so incurred, or alleged to be incurred. or any part thereof, without action, suit or information brought or commenced for the recovery thereof.

**94.** Every pecuniary penalty imposed by this chapter, or by any regulation of the Postmaster General made under it, shall be recoverable with costs by the Postmaster General by civil action or complaint in any court of competent jurisdiction, and shall belong to Her Majesty for the public uses of the colony, saving always the power of the Governor in Council to allow any part or the whole of such penalty to the officer or person by whose information or intervention the same was recovered; but no such penalty shall be sued for except within one year after it is incurred:

(*a.*) If the penalty does not exceed twenty-five dollars it shall be recoverable before any one Justice of the Peace in a summary manner, and if not paid may be levied by distress under warrant of such Justice; and if the penalty exceeds twenty-five dollars, the offender may be indicted for a misdemeanor for violating the provisions of this chapter, or the regulations made under it instead of being sued for such penalty; and if convicted, shall be punished by fine or imprisonment, or both, in the discretion of the Court.

**95.** In any action or proceeding for the recovery of postage, or of any penalty under this chapter, the same may be recovered on the evidence of any one creditable witness, and any postmaster or other officer or servant

of the Post Office of Newfoundland shall be a competent witness, although he is entitled to, or entertains reasonable expectations of receiving some portion or the whole of the sum to be recovered; and the burden of proof that any thing proved to have been done by the defendant was in conformity to or without violation of this chapter, shall lie upon the defendant.

**96.** In any action, suit or proceeding against any postmaster or other officer of the Post Office of Newfoundland, or his sureties, for the recovery of any sum of money alleged to be due to the Crown as the balance remaining unpaid of moneys received by such postmaster or officer, by virtue of his office, a statement of the account of such postmaster or officer showing such balance, and attested as correct by the certificate and signature of the accountant of the Post Office of Newfoundland, or of the officer then doing the duties of such accountant, shall be evidence that such amount is so due and unpaid as aforesaid; and in every such suit judgment shall be rendered for double the amount appearing by such account to be so due to the Crown by the defendant.

**97.** All suits, proceedings, contracts and official acts brought, had, entered into or done by the Postmaster General, shall be brought, had, entered into or done in and by his name of office, and may be continued, enforced and completed by his successor in office as fully and effectually as by himself; and no appointment or authority of any Postmaster General of Newfoundland, or any postmaster, officer or servant of the Post Office shall be liable to be traversed or called in question, in any case, except by those who act for the Crown:

(*a.*) All suits for the recovery of debts or balances due to Her Majesty in respect to the Postal Service, whether they appear by bond or obligation made in the name of the existing or any preceding Postmaster General, or otherwise, may be instituted in the name of the Postmaster General.

### Security by Officers.

**98.** Any bond or instrument of guarantee given and executed to Her Majesty, by any person or body corporate, as security for the due performance of the duties of his office, by any officer, employee, clerk or servant employed by or under the Postmaster General, may be expressed to extend to, and to include as a breach of the conditions thereof, any theft, larceny, robbery, embezzlement, loss or destruction by such officer, employee, clerk or servant, or through his malfeasance, misfeasance or neglect of duty, of any money, goods, chattels, valuables or effects, or of any letter or parcel containing the same, which may come into his custody or possession as such officer, employee, clerk or servant, and although the same does not belong to the Crown, and the Postmaster General is not liable for the loss thereof; and Her Majesty may, upon such bond or instrument of guarantee, proceed for, demand and recover the amount or

value of any such money, goods, chattels, valuables or effects not otherwise recovered by or for the persons entitled to the same, to the amount of the penalty stipulated in such bond or instrument; and upon the recovery and receipt of the same the Postmaster General shall apportion and pay the same to such person, or amongst such persons, as he determines to be the owner of or otherwise entitled to receive any such money, goods, chattels, valuables or effects, or the equivalent or value thereof; but nothing herein contained shall create any liability on the part of Her Majesty or the Postmaster General, to any person whomsoever, to indemnify or hold harmless, pay or reimburse such person for the loss of any such money, goods, chattels, valuables or effects, except as herein expressly provided.

**99.** It shall be in the power of the Governor in Council, upon the recommendation of the Postmaster General, to alter the name of, name, and re-name any settlement, village or town in this colony; and such name given or made by the Governor in Council, upon such recommendation, as aforesaid, shall be the name of the post office under this chapter, and shall also be the name of the town, village or settlement whose name shall have been so changed, made or given by authority hereunder; provided that due notice of such naming or change of name shall be given by the Governor in Council by proclamation or otherwise.

**100.** All provisions of "The Customs' Act," and more especially the provisions for protecting officers and others employed in collecting duties, or in preventing the evasion of the laws imposing duties, when in the performance of the duties of their office, or in respect of suits or proceedings against them for things done, or alleged to be done, in pursuance of any law, shall extend and apply in like manner to officers and persons employed in or under the Post Office of Newfoundland, and to suits or proceedings against them for things done, or alleged to be done, under this chapter.

**101.** The Postmaster General, subject to the approval of the Governor in Council, may make rules and regulations for the purpose of carrying into effect this chapter, and alter and amend the same, which rules and regulations, together with such alterations and amendments, when published under the authority of the Governor in Council in the *Royal Gazette*, shall be deemed to be part of, and incorporated with this chapter.

# CHAPTER 22.

## Of the Newfoundland Savings' Bank.


SECTION
1.—Receiver General and depositors to be body corporate by the name of "The Newfoundland Savings' Bank."
2.—Revenue liable for deposits.
3.—Governor to appoint cashier and governors.
4.—Governors to continue in office after termination of Assembly until appointment of successors.
5.—Governor in Council may remove governors, fill vacancies, &c.; vacancies among directors, how filled.
6.—Governor may disallow rules, &c., made by governors.
7.—Directors, how appointed.
8.—Governor to fix salaries, expenses not to exceed $8,000.
9.—Directors to superintend payment and receipts by cashier; report to be laid before the Legislature annually.
10.—Deposits, &c., to be kept in place of safety; cashier to give security.
11.—Rules regarding deposits.
12.—Rules respecting trust money deposited by Supreme Court.
13.—Governors may appoint branch banks in outports.
14.—Disputes touching deposits may be heard and determined upon petition to Supreme Court.
15.—Profits of bank to be applied to liquidation of public debt.


**1.** The Receiver General of this colony, and such persons as may for the time being have deposits in the bank hereafter named, shall be a body corporate by the name of "The Newfoundland Savings Bank," by which name they shall have continual succession and a common seal, with power to alter the same at pleasure, and shall sue and be sued in all courts of law and equity, and may hold, purchase, demise and convey any real or personal property.

**2.** The general revenue of this colony shall be liable for all moneys deposited in the Bank and all interest payable thereon.

**3.** The Governor in Council shall appoint a cashier and an accountant of the Bank and eight governors thereof, of whom five shall be selected from the members of the House of Assembly, including the Speaker thereof, and three from the Legislative Council; three of the governors of the Bank shall be a quorum, and have full power to make, alter and amend rules and regulations for the management of the Bank: Provided that no person shall be a governor thereof who shall be officially connected with any other bank.

**4.** Upon the dissolution or termination by efflux of time, of any Assembly, the governors who may at such time be members of the Assembly shall, subject as hereinafter provided, continue in office until the appointment of their successors after the meeting of the next Assembly.

**5.** The Governor in Council may at any time remove any of the governors of the said Bank, and also may, at any time fill any vacancy

that may occur among the said governors by death, resignation, removal or otherwise. Upon a vacancy occurring among the directors, the governors may elect one of their number to fill such vacancy, to hold office until the next annual election of directors.

**6.** The Governor in Council may disallow any rule, bye-law, or other proceeding of the governors within one month after the same shall have been adopted; and in order to the exercise of this power, copies of the minutes of the proceedings at every meeting of the governors shall be immediately transmitted to the Colonial Secretary, for the information of the Government.

**7.** The governors shall annually elect from among themselves three directors, who shall superintend the affairs of the Bank, in accordance with the rules and bye-laws prescribed for the management thereof.

**8.** The governors of the said Bank may, subject to the revision of the Governor in Council, fix the salaries of the cashier, accountant, directors, and any necessary officers: Provided that the salaries and incidental expenses of the Bank shall not exceed the sum of eight thousand dollars annually.

**9.** The directors shall personally superintend the payments and receipts by the cashier, examine his accounts and vouchers, and certify the same; the cashier shall prepare a statement at the end of every year of the accounts and all proceedings, and a report of the state of the Bank, which shall be examined and certified by the directors, and be laid before the Legislature at the next session thereof.

**10.** All deposits, moneys, funds, securities, and other property of the Bank shall be kept in a place of safety to be approved of by the Governor in Council, and the cashier shall be liable and give sufficient security, to be approved of by the Governor in Council, for the care, custody and safe-keeping thereof, and for the faithful discharge of the duties of his office; but nothing herein contained shall prevent the directors of the Bank from lending, upon real, personal or Government securities, any funds of the Bank.

**11.** Depositors of sums of not less than four dollars, or over two hundred and fifty dollars, for a period of not less than six months, shall receive interest at the rate of three per centum per annum thereon, but no interest shall be calculated on the fractional part of a dollar, or for a less period than a month; and no account shall be opened before the first day of the month next ensuing after the date of the deposit: Provided that the Governor in Council may, by order, define and limit an amount over two hundred and fifty dollars to be received from depositors in the Bank, and the amount thereof upon which interest shall be payable.

**12**. Any money belonging to or held in trust for, an infant, idiot, unatic, or a feme covert, or which may be paid into the Supreme Court under order or decree of the Court, may be received by the Bank, there to remain subject to the orders of the said Court, but the interest to be allowed thereon shall be in the discretion of the governors, subject to the order of the Governor in Council.

**13**. The governors may appoint branches or offices of deposit in any part of this colony for the convenience of persons residing at a distance from St. John's.

**14**. All disputes touching the deposits or other affairs or business of the Bank may be heard and determined upon petition to the Supreme Court.

**15**. The profits of the said Bank now existing, and the profits of the said Bank as they shall arise from time to time and all interest accruing thereon, shall be constituted a sinking fund for the liquidation of the public debt of the colony, and such fund shall be applied in the first instance towards the payment of all debentures of the colony, which are or may be held by the said Bank.

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# CHAPTER 23.

## Of the Penitentiary and Prison Labour.


SECTION

1.—Penitentiary to be a prison.
2.—Who shall be imprisoned in Penitentiary.
3.—Powers of Superintendent and officers.
4.—Governor in Council may prescribe rules respecting discipline, &c.
5.—Officers offending; liability upon proof.
6.—Laws for protection of Justices shall extend to Superintendent.
7.—Who may visit Penitentiary.
8.—Governor in Council may make rules to prevent escapes.
9.—Prisoners may be employed beyond the limits of the Penitentiary
10.—Rules of Penitentiary to apply.
11.—Prisoners to be under care and supervision of officers.
12.—Places where prisoners employed to be deemed portion of the Penitentiary.


**1**. The Penitentiary, situate in the Central District, shall be used as a prison for offenders and for the confinement of persons imprisoned for debt.

**2**. All persons convicted of any crime or offence, and all persons who shall be committed or ordered to be imprisoned under any criminal charge or criminal or civil process or proceeding, may be confined in the said Penitentiary for their respective terms of imprisonment, or as committed or ordered by any of the Courts, Judges or Justices of this island or its

dependencies, and the said respective Courts, Judges and Justices, may cause all persons sentenced, committed, or ordered to be imprisoned, to be taken to the said Penitentiary, and make all necessary regulations for the conveyance of such persons; and the Superintendent or Keeper of the said Penitentiary shall receive such persons into his custody, there to remain for their respective terms or conditions of imprisonment, or until discharged by due course of law.

3. The Superintendent, or person under him having the custody of any prisoner, shall, during the term for which such person shall be ordered to remain in custody, have the same powers over him as are incident to the office of Sheriff or Jailer; and in case of any misbehaviour or negligence in discharge of his office, the said Superintendent shall be liable to the same punishment to which a jailer is now liable.

4. The Governor in Council shall have power to make and prescribe rules and regulations respecting the discipline and general management of the Penitentiary, its Superintendent, officers and servants, and respecting the control, employment, dietary and treatment of prisoners, which rules and regulations shall be carried into effect under the direction and management of the Attorney General.

5. Every officer or servant of the Penitentiary bringing or carrying out, or endeavouring to bring or carry out, to or for any convict or criminal, money or any article not allowed by the rules of the Penitentiary, shall be forthwith suspended by the Superintendent, who shall forthwith report the offence to the Attorney General, who shall enquire thereof upon oath which he may administer, and upon proof of the offence, and with the consent of the Governor in Council, may dismiss such officer or servant, and also may cause the offender to be apprehended and carried before a Stipendiary Justice, who shall hear and determine any such offence in a summary way; and every officer or servant, upon conviction of such offence before a Justice, shall be liable to a penalty not exceeding two hundred dollars, and in default of payment of such penalty, to be imprisoned in the Penitentiary, there to be kept with or without hard labor for any term not exceeding six months.

6. All laws now or hereafter to be in force in this island for the protection of Justices in the execution of their offices, shall extend to the Superintendent or Keeper of the Penitentiary, when acting under the provisions of this chapter.

7. The Judges of the Supreme Court, Justices of the Peace, and members of both branches of the Legislature, may at all seasonable times visit and inspect the Penitentiary.

8. The Governor in Council may, from time to time, make and alter rules and regulations for the purpose of preventing escapes and preserving discipline in the case of prisoners in the Penitentiary or other gaols in this colony, when employed beyond the limits thereof.

**9**. After such rules and regulations shall be made, the Governor in Council may, from time to time, direct and authorize the employment upon any work or duty beyond the limits of the said Penitentiary and gaols, of any prisoner who may be sentenced to be imprisoned, with hard labor, in the said Penitentiary or gaols.

**10**. All prisoners shall, during such employment, be subject to all the rules, regulations, and discipline of the said Penitentiary or gaols, so far as applicable, and to any rules and regulations made under the authority of this chapter.

**11**. No prisoner shall be so employed save under the care and supervision of officers appointed to that duty.

**12**. Every street, highway, road, or public thoroughfare, or place, along or upon which prisoners may pass in going to, or returning from their work, and every street, highway, road, public thoroughfare, building, or place, where they may be employed under this chapter, shall, while so used, be considered as a portion of the Penitentiary or gaols; and any escape or attempt at escape, and any rescue or attempt at rescue, shall be held to be an escape or attempt at escape, or rescue or attempt at rescue, as if the same had taken place within or from the said Penitentiary or gaols.

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# CHAPTER 24.

## Of the Constabulary and Special Constables.

SECTION
1.—Organization of Constabulary Force.
2.—Its designation.
3.—Number, &c.
4.—Headquarters.
5.—Inspector and general superintendent.
6.—Rules to be published.
7.—Special constables, &c.
8.—Expenditure for maintenance of force; subject to revision by Legislature.

**1**. The Governor in Council may organize and maintain an efficient constabulary force in this colony, for the preservation of the peace and the protection of life and property.

**2** The force shall be designated "The Constabulary Force of Newfoundland."

**3**. The Governor in Council may prescribe the number of men of which such force shall be composed, and make all proper and necessary orders, rules and regulations for the appointment, governing, regulating, arming, clothing, equipping, lodging and paying of the officers and men of the said constabulary force, and for regulating the residence, classification, rank, service, instruction and distribution of the said force, and for its government generally

**4**. The head-quarters of the said force shall be at St. John's, and all future constabulary appointments in the colony shall be made from said head-quarters.

**5**. There shall be an Inspector and General Superintendent of the constabulary force of Newfoundland, who shall have control over and charge of the whole constabulary force of the colony, subject to the orders and directions of the Governor in Council: Provided that outport constables already appointed shall not be superseded under nor be subject to the provisions of this chapter, but they shall obey all lawful orders and instructions given them by the said Inspector and General Superintendent.

**6**. The rules and regulations made in pursuance of the provisions of this chapter shall be published in the *Royal Gazette* of this Island, and, after such publication, shall have the same force and effect as if they were specially enacted by this chapter.

**7**. Whenever it shall be found that the ordinary constabulary force is insufficient to maintain the public peace of any locality, any stipendiary Magistrate, or, in his absence, a Justice, may call on and appoint such number of persons as may be deemed necessary to act as special constables in such locality; and every stipendiary Magistrate or Justice may administer to every person so appointed the following oath:—

I, , do solemnly swear that I will well and truly serve our Sovereign Lady the Queen in the office of special constable for the district of without favor or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty's subjects; and that I will discharge the duties of my said office faithfully according to law. So help me GOD.

And if any person, being so called on or appointed a special constable as aforesaid, shall refuse to take said oath when required by the stipendiary Magistrate or Justice so appointing him, he shall be liable to be convicted thereof forthwith before the stipendiary Magistrate or Justice so requiring him, and to forfeit and pay such sum of money, not exceeding twenty dollars, as to the said Magistrate or Justice may seem meet, or imprisonment for a period not exceeding two calendar months: Provided that whenever it shall be deemed necessary to nominate and appoint such special constables, notice of such nomination and appointment, and of the circumstances which rendered such nomination and appointment necessary, shall be forthwith transmitted by the stipendiary Magistrate or Justice making such appointment to His Excellency the Governor in Council.

**8**. The expenditure for the maintenance of the said force shall be subject to the annual revision and vote of the Legislature.

# CHAPTER 25.

## Of Education.


SECTION

1.—General appropriation $80,736.80.
2.—A further sum of $5,526.39 for destitute districts.
3.—$8,133.25 for districts other than St. John's, Harbor Grace and Carbonear.
4.—$5,297.87 for higher education.
5.—$1,381.60 for registers and school apparatus.
6.—$5,610.84 for the training of pupil teachers.
7.—$5,297.87 for the encouragement of teachers.
8.—Certain sums shall be appropriated for the superintending of the schools of the several denominations.
9.—Additional appropriations for school inspection.
10.—Appropriations for the inspection of schools other than Church of England, Methodist and Roman Catholic.
11.—$924 for the Harbor Grace grammar school.
12.—$1,382.20 for Carbonear grammar schools.
13.—Appropriations for Church of England, Roman Catholic, Methodist and General Protestant Colleges for higher education.
14.—$20,000 supplemental grant for teachers' salaries.
15.—Annual appropriation for Teachers' Pension Fund.
16.—All moneys to be paid by warrant on the Receiver General.
17.—Boards of Education in Church of England districts.
18.—$2,307.70 to be paid annually to the Colonial and Continental Church Society.
19.—$500 towards maintenance of the Central Training Schools in St. John's.
20.—$600 for the support of a home for Church of England pupil teachers.
21.—$400 for the support of a home for Methodist pupil teachers.
22.—$600 for the support and maintenance of Roman Catholic pupil teachers.
23.—Boards of Education for Roman Catholic districts.
24.—$2,320.88 to the Roman Catholic Bishop of St. John's, and $1,850.04 to the Roman Catholic Bishop of Harbor Grace, for Convent schools.
25.—$1,229.12 for the Roman Catholic Academy, Harbor Grace.
26.—Annual appropriations for Saint Patrick's schools and Convent schools in Saint John's.
27.—Boards of Education for Methodist districts.
28.—Congregationalist Boards of Education.
29.—Presbyterian Boards of Education
30.—Board of Education for the Reformed Episcopal Church.
31.—Board of Education for the Salvation Army.
32.—Boards of Education for the Carbonear Grammar schools.

SECTION

33.—Board of Education for the Roman Catholic Academy, Harbor Grace.
34.—Alteration of boundaries of districts and vesting of school property.
35.—Respecting vacancies in Educational Boards.
36.—Powers of Boards to make bye-laws and regulations.
37.—Annual meetings of Boards, the transmission of accounts, &c.
38.—General meetings of Boards may be called by requisition.
39.—Visiting of schools distant from the residence of chairman.
40.—Application of surplus funds.
41.—Appointments of teachers to be notified to the proper superintendent.
42.—All school property shall vest in Boards.
43.—Powers of Boards as to purchase and sale of property.
44.—Actions shall be brought in name of the chairman.
45.—Scale of fees.
46.—Recovery of fees.
47.—Church of England educational districts.
48.—Roman Catholic educational districts.
49.—Methodist educational districts.
50.—Congregationalist educational districts.
51.—Powers and duties of the Boards of Examiners for the several denominations.
52.—Qualified candidates may be indentured to the proper superintendent.
53.—Candidates for denominations without Academies may be indentured to the Church of England or Methodist superintendent.
54.—Minors may be parties to indentures.
55.—The course of training of pupil teachers.
56.—Examinations of pupil teachers.
57.—Recognized training schools.
58.—Certificated teachers may be admitted to a training school for a higher grade.
59.—Qualification of teachers in public schools.
60.—Engagement and dismissal of teachers.
61.—School year; what.
62.—Duties of teachers in public schools.
63.—Religious instruction in public schools.
64.—Teachers' Pension Fund.
65.—Concerning payments from fund.
66—Application of funds after twenty years.
67.—Members of religious orders exempt.
68.—Time of operation.
69—Boards shall visit schools half-yearly.
70.—School visitors.
71.—Appointment of three superintendents.
72.—Duties of the superintendents.
73.—Inspection of schools by others than the superintendents.
74.—Commissioners of the Harbor Grace Grammar school.
75.—Colleges for higher education.

SECTION
76.—Boards of Education for colleges to be appointed by the Governor in Council.
77.—Directors of the Church of England college.
78.—Governors of the Methodist college.
79.—Powers of the Boards of the colleges.
80.—Duties of Boards.
81.—Governor shall visit schools and colleges.
82.—Scholarships in each college.
SECTION
83.—Methods of teaching to be taught in colleges.
84. Directors for denominations other than the three mentioned.
85.—Newfoundland Jubilee Scholarship.
86.—Definitions of terms.
87.—Repealing section.
88.—Time of operation and short title.
Schedules.

## PART I.

### GRANTS.

**1.** There shall be annually appropriated, for general educational purposes, out of such moneys as shall, from time to time, be in the hands of the Receiver General, unappropriated, the sum of eighty thousand seven hundred and thirty-six dollars and eighty cents to be apportioned among the several religious denominations of the colony according to population, to be expended by the several Boards of Education now appointed or hereafter to be appointed in the several districts provided for in this chapter, subject to certain deductions, as mentioned in sections 18, 19, 22 and 24: Provided that before any distribution of the grant made by this section for Protestant educational purposes, there shall be deducted therefrom, and paid to John Haddon, late Protestant Inspector, the sum of four hundred dollars annually for life, or until he shall accept an office under the Government of this colony at a salary of eight hundred dollars per annum.

**2.** The further sum of five thousand five hundred and twenty-six dollars and thirty-nine cents shall be annually appropriated and apportioned among the several religious denominations of this colony, subject to the deductions mentioned in sections 20 and 21 of this chapter, and expended in such manner as the Governor in Council may determine in furtherance of education in places outside the city of St. John's in any of the districts where there are not means adequate for the support of schools, and it shall be the duty of the persons respectively, to whom the amounts allocated to the several religious denominations under this section shall be paid, to transmit at the end of each school year detailed statements of the expenditure of their respective allocations to the proper Superintendent, for publication in his annual report.

**3.** The further sum of eight thousand one hundred and thirty-three dollars and twenty-five cents shall be annually appropriated for general educational purposes, to be apportioned among the several religious denominations, according to population, and expended by the several Boards of Education now appointed or hereafter to be appointed in districts other than St. John's, Harbor Grace and Carbonear, subject to the deduction mentioned in section 25 of this chapter: Provided this exception shall not apply to Boards of Education in Harbor Grace not participating in the appropriation made under section 4 of this chapter

**4.** The further sum of five thousand two hundred and ninety-seven dollars and eighty-seven cents shall be annually appropriated for the en-

couragement of higher education, and apportioned among the several religious denominations of the colony, according to population, to be expended by the Governor in Council on the recommendation of the Superintendents of Education, subject to the exception mentioned in section 25 of this chapter, in districts other than the districts of St. John's and Carbonear, and in central and populous localities in which there has been provided an eligible school, equipped with suitable apparatus, and in which the scale of fees established by the board shall not be less than double the fees payable under section 45 of this chapter. Schools aided by this grant shall be taught by teachers of first grade

5. The further sum of one thousand three hundred and eighty-one dollars and sixty cents shall be annually appropriated and apportioned among the several religious denominations of the colony, according to population, to be expended by the several Boards of Education in the respective districts, in providing as a first charge authorized registers, and with the balance suitable books, maps and school apparatus.

6 The further sum of five thousand six hundred and ten dollars and eighty-four cents shall be annually appropriated and apportioned among the several religious denominations of the colony, according to population, to be applied by the Governor in Council for the training of pupil teachers. The said moneys shall be paid, from time to time, by warrant on the Receiver General, on certificate of the Superintendent of Education, to whom such pupil teachers may be indentured; and the sum of one hundred and sixteen dollars shall be the maximum amount annually paid towards the board, lodging and training of any male pupil teacher; and in cases of females, the maximum amount shall be one hundred dollars per year.

7. The sum of five thousand two hundred and ninety-seven dollars and eighty-seven cents shall be annually appropriated and apportioned among the several religious denominations of the colony, according to population, to be applied annually by the Governor in Council for the encouragement of teachers who have received from the proper Board of Examiners a certificate of qualification, according to the following scale, viz.:—six dollars per annum for each teacher holding a third grade; twelve dollars for each teacher holding a second grade, and twenty dollars for each teacher holding a first grade: Provided always, that no teacher shall receive said money unless the Superintendent of his denomination shall certify that he has complied with the requirements of section 62 of this chapter. Should the amount allocated for each denomination be insufficient to pay all certificated teachers the aforesaid sums, the said teachers shall share in the said sum appropriated proportionally according to grade.

8 For the purpose of defraying the expenses of superintending and inspecting schools, there shall be annually appropriated the further sum of one thousand six hundred and twenty dollars for the Church of England Superintendent; the sum of one thousand six hundred and twenty dollars

for the Roman Catholic Superintendent; and the sum of one thousand six hundred and twenty dollars for the Methodist Superintendent; which amounts shall include all travelling expenses of each Superintendent.

9. In addition to the amounts granted in the last preceding section, there shall be annually appropriated to the general fund for educational purposes, for the members of the Church of England, the sum of one thousand one hundred and seventy-nine dollars and four cents; for members of the Roman Catholic Church, the sum of one thousand two hundred and ninety dollars and thirty-five cents; and for the members of the Methodist Church, the sum of five hundred and eleven dollars and thirty-nine cents: Provided that, for the purpose of securing, as far as possible, a full inspection of all schools provided for in this chapter, each of the sums in this section mentioned shall be subject to a deduction of four hundred dollars, to be paid by the Governor in Council to Inspectors' Assistants to be engaged from time to time by the Governor in Council, on the recommendation of the respective superintendents.

10. There shall be annually appropriated for inspection of schools of denominations other than the Church of England, the Roman Catholic Church, and the Methodist Church, such amounts as they would respectively be rateably entitled to, according to population, upon the basis of the grant to other denominations.

11. The further sum of nine hundred and twenty-four dollars shall be annually appropriated and applied for the purposes of the Harbor Grace Grammar School. The said Harbor Grace Grammar School shall be inspected at least once in every year under the order and direction of the Governor in Council by one of the superintendents of education appointed under this chapter, who shall report upon the condition and management thereof.

12. The further sum of one thousand three hundred and eighty-two dollars and twenty cents shall be annually appropriated, to be apportioned among the several religious denominations in the electoral district of Carbonear, according to population, towards the support of grammar or superior schools therein.

13. There shall be annually appropriated for the purposes of the Church of England College the sum of three thousand three hundred and thirty-two dollars and ninety-five cents; for the purposes of the Roman Catholic College, the sum of three thousand four hundred and sixty-five dollars and forty-nine cents; for the purposes of the Methodist College, the sum of two thousand five hundred and thirty-seven dollars and ninety-five cents; and for the General Protestant College, the sum of one thousand and seventeen dollars and twenty cents, which said sum of one thousand and seventeen dollars and twenty cents shall be in lieu of all educational moneys appropriated to Presbyterians in this chapter,

together with the money for higher education for the Congregationalists; subject, nevertheless, to a deduction of one hundred and fifty dollars for the support of a Presbyterian school in Harbor Grace; and there shall be annually appropriated for the encouragement of higher education for members of churches other than the Church of England, Roman Catholic Church, Methodist Church, Presbyterian Church and Congregational Church, sums of money equal in proportion, according to population, to the amount hereby granted for the purposes of the Colleges in this section mentioned.

**14.** The further sum of twenty thousand dollars shall be annually appropriated as a supplemental grant and apportioned among the several religious denominations of the colony according to population, to be applied by the Governor in Council and paid semi-annually, namely, in the months of June and December, subject to the deductions provided for in section 64 relating to the Teachers' Pension Fund, in augmentation of the salaries of teachers who have received certificates of qualification from, or whose certificates of qualification are recognized by any Board of Examiners appointed under this chapter, according to the following scale, that is to say, at the rate of thirty-two dollars per annum to each teacher holding a third grade, forty-eight dollars per annum to each teacher holding a second grade, and sixty-four dollars per annum to each teacher holding a first grade: Provided the proper superintendent shall certify that such teachers have been duly employed in public schools: Provided also that should the amount allocated for each denomination be insufficient to pay all certificated teachers the aforesaid sums, the said teachers shall share in the said sum proportionately according to grade: Provided further, that in schools in which the average number of pupils registered per quarter does not exceed fifty, only one teacher shall receive a share of the annual appropriation hereinbefore mentioned; where the number so registered is over fifty and less than one hundred, two teachers may share in this grant, and so on for every additional fifty pupils so registered, but in no school shall more than six teachers share in the monies so appropriated.

**15.** There shall be annually appropriated by the Government, in accordance with sub-section (2) of section 64, towards the support of the Teachers' Pension Fund hereinafter established, and paid in accordance with the rules governing the same, such a sum as shall, together with the interest allowed by the Savings' Bank, be equal to the interest at six per cent. on the amount to the credit of the fund in the Savings' Bank at the beginning of each year, for a period of twenty years.

**16.** All sums of money granted in this chapter shall be paid by warrant on the Receiver General.

**17.** The Governor in Council shall appoint in each of the Church of England districts five or seven members of the Church of England, one of whom shall be the senior clergyman of the said Church actually resi-

dent or officiating in such district, to form and be a Church of England Board of Education for such district. And the said boards shall manage and expend all moneys hereby appropriated for Church of England general educational purposes in the respective districts, subject to the deductions mentioned in section one of this chapter. In the St. John's districts such boards may consist of nine or more members. In districts where superior schools are or may be established under this chapter, such boards may consist of nine members

**18**. The sum of two thousand three hundred and seven dollars and seventy cents shall be paid annually to the Colonial and Continental Church Society, which amount shall be deducted from the appropriations hereby made for members of the Church of England in the several districts where the said Society's schools are or shall be established: Provided the number of such schools be not less than eighteen, according to the number of the Society's schools from time to time in operation in each district, an equal amount being deducted for each school, the Society's schools at present existing in the St. John's district being considered as three schools, which said sum shall be paid quarterly to the president of the corresponding committee or other person duly authorized to receive the same, on the production of a certificate that a school or schools have been in operation in the several districts where the said Society's schools may be established under the direction of the said Society, and for the period for which the amount is payable. In case the said Society shall, at any time, withdraw or close its school or schools in any of the districts, the amount payable to the said Society for the support of such school shall be paid to the Church of England Board of Education for such district.

**19**. The sum of five hundred dollars shall be paid annually to the Colonial and Continental Church Society towards the maintenance of the Central Training Schools in St. John's, in providing competent teachers to instruct such pupil teachers as shall be duly appointed to be trained therein, which said sum shall be deducted from the appropriations hereby made for the members of the Church of England in the several districts provided for in this chapter, and paid in quarterly instalments to the president of the corresponding committee or other person duly authorized to receive the same, on production of a certificate from the superintendent of Church of England schools that such Central Training School affords all necessary facilities for the training of such pupil teachers.

**20**. The sum of six hundred dollars shall be annually paid to the Church of England Board of Examiners towards the support of a home for pupil teachers of the Church of England in St. John's, which said sum shall be deducted from the appropriation made under section 2 of this chapter for members of the Church of England, and expended under rules and regulations to be approved by the Governor in Council.

**21.** The sum of four hundred dollars shall be paid annually to the Methodist Board of Examiners, towards the support of a home in St. John's for Methodist pupil teachers, which said sum shall be deducted from the appropriation made under section 2 of this chapter for Methodists, and expended under rules and regulations to be approved by the Governor in Council.

**22.** The sum of six hundred dollars shall be annually paid to the Roman Catholic Board of Examiners, towards providing for the proper lodging and maintenance of Roman Catholic pupil teachers, in St. John's, of which the sum of three hundred dollars shall be applied for the purposes of male pupil teachers, and three hundred dollars towards the support of a home for females, in such manner and under such rules and regulations as may be approved by the Governor in Council; which sums shall be deducted from the appropriation made under section 1 of this chapter for Roman Catholic general educational purposes.

ROMAN CATHOLIC.

**23.** The Governor in Council shall appoint in each of the Roman Catholic districts five or seven members of the Roman Catholic Church, one of whom shall be the senior superior clergyman of the said church actually resident or officiating within such district to form and be a Roman Catholic Board of Education for such district; and the said boards shall manage and expend all monies hereby appropriated for Roman Catholic general educational purposes in the respective districts, subject to the deductions mentioned in sections 9, 22, 24 and 26 of this chapter. In St. John's such board may consist of nine or more members. In districts where superior schools are established under this chapter such boards may consist of nine members. It shall only be necessary to appoint one board for the districts of Harbor Grace, Carbonear, and Trinity South, of which the Roman Catholic Bishop of Harbor Grace shall be chairman.

**24.** There shall be paid annually to the Roman Catholic Bishop of St John's the sum of two thousand three hundred and twenty dollars and eighty-eight cents for the support of convent schools, as follows:—

For the Convent school at Renews, three hundred and forty-six dollars and sixteen cents.

At Ferryland, two hundred and seven dollars and sixty-eight cents.

At Witless Bay, two hundred and thirty dollars and seventy-six cents.

At Placentia, two hundred and thirty dollars and seventy-six cents.

At Burin, two hundred and thirty dollars and seventy-six cents.

At St. Mary's, two hundred and thirty dollars and seventy-six cents.

At Trepassey, two hundred and twenty-two dollars.

At St. Lawrence, two hundred and twenty-two dollars.

At Harbor Briton, two hundred dollars.

And there shall be paid annually to the Roman Catholic Bishop of Harbor Grace the sum of one thousand eight hundred and fifty-one dollars and four cents to be expended for the support of Convent schools, as follows:—

For the Convent school at Harbor Grace, four hundred and sixty-one dollars and seventy-six cents.

At Carbonear, four hundred and sixty-one dollars and seventy-six cents.

At Conception Harbor, three hundred and twenty dollars.

At Harbor Main, three hundred and forty-six dollars and seventy-six cents

At Brigus, two hundred and sixty dollars and seventy-six cents.

Which said sums shall be deducted from the appropriation made under section 1 of this chapter, for Roman Catholic general educational purposes.

**25.** There shall be annually appropriated towards the support of the Roman Catholic Academy in Harbor Grace the sum of one thousand two hundred and twenty-nine dollars and twelve cents, of which the sum of four hundred and sixty-one dollars and fifty-six cents shall be deducted from the Roman Catholic share of the appropriation under section 3 of this chapter and seven hundred and sixty-seven dollars and fifty-six cents from the Roman Catholic share of the appropriation under section 4 of this chapter. The said sums shall be paid to the Board of Education appointed under section 33 of this chapter.

**26.** There shall be annually appropriated by the Roman Catholic Board for the district of St John's, the sum of seven hundred dollars towards the support of St Patrick's school. And there shall be annually appropriated by the said board and paid to the Roman Catholic Bishop of St. John's towards the support of the Presentation Convent school in St. John's East, the sum of one thousand dollars, towards the support of the Presentation Convent school in St John's West, the sum of five hundred dollars, and towards the support of the Convent in Torbay, the sum of two hundred dollars. The aforesaid sums shall be paid upon the production of the certificate of the Roman Catholic superintendent that such schools have been in active operation for the period for which the said amounts are payable.

METHODIST.

**27.** The Governor in Council shall appoint in each of the Methodist districts five or seven members of the Methodist Church, one of whom shall be the senior or superintendent clergyman of the said church, actually resident or officiating in such district, to form and be a Methodist Board of Education for such district, and the said boards shall manage and expend all moneys hereby appropriated for Methodist general educational purposes in their respective districts. In St. John's such boards may consist of nine or more members. In districts where superior schools are established under this chapter such boards may consist of nine members.

**28.** The Governor in Council shall appoint in each of their districts, respectively, five or seven members of the Congregationalists to form and be Boards of Education for the Congregationalists for such districts, and the said boards shall manage and expend all moneys hereby appropriated for the Congregationalists in the said districts, except the appropriation under section 13 of this chapter. The meetings of such boards shall be held respectively at Harbor Grace and St. John's.

**29.** The Governor in Council may appoint in Harbor Grace five or seven members of the Presbyterian Church to form and be a Board of Education for the Presbyterians, and to manage and expend the sum of one hundred and fifty dollars mentioned in section 13 of this chapter.

**30.** The Governor in Council may appoint five or seven members of the Reformed Episcopal Church to form and be a Board of Education for the said Church, to manage and expend all monies hereby appropriated for the Reformed Episcopal Church. The meetings of such board shall be held in Brigus.

**31.** The Governor in Council may appoint five or seven members of the Salvation Army, to form and be a Board of Education for the said Salvation Army, to manage and expend all moneys hereby appropriated for the said body. The meeting of such board shall be held in St. John's: Provided that until the Salvation Army shall have established schools, and such schools shall have been approved by the Governor in Council, the money appropriated to the Salvation Army shall be divided amongst the Protestant denominations, according to population, having schools in operation in settlements where the members of the Salvation Army reside.

**32.** The Governor in Council may appoint five or seven members of each religious denomination as Boards of Education to manage and expend the moneys granted by section 12 of this chapter, for Carbonear grammar or superior schools

**33.** The Governor in Council may appoint five or seven members of the Roman Catholic denomination resident in Harbor Grace as a Board

of Education to manage and expend the moneys appropriated under section 25 of this chapter, for the Roman Catholic Academy of that place, of which the Roman Catholic Bishop of Harbor Grace shall be chairman.

**34**. The Governor may, by order in Council, from time to time, as occasion shall require, upon the recommendation of the superintendent, alter and change the boundaries of districts defined in this chapter, and constitute new districts for the purposes of the said chapter, and such order shall be published in the *Royal Gazette* and laid before the Legislature in the ensuing session All school property vested in the Board of any district sub-divided in accordance with the provisions of this section shall vest in the Boards of the new districts so constituted, according as such property is situate within the boundaries of such new districts.

**35**. Whenever any vacancy shall occur in any of the Educational Boards, by the death, resignation, removal from the district, or absence from the Colony for twelve months of any member thereof, the Governor in Council may appoint a person to fill such vacancy.

### Powers and Duties of Boards.

**36** Such Boards of Education shall have power to make bye-laws, rules and regulations, not contrary to the provisions of this chapter, for the establishment and management of schools within their respective districts, and for the appropriation of the respective sums of money herein or hereafter to be granted for such districts: Provided that a majority at least of the members of a Board shall be present at the transaction of any business by the said Board, except in case of St John's where five shall be sufficient. All bye-laws, rules and regulations shall be submitted by the Boards to the Governor in Council for his approval, and shall be of no effect until such approval has been received.

**37**. The annual meeting of every Board of Education shall be held on the first Wednesday in July in each year, or as soon as practicable thereafter, when from the members thereof, a chairman and other officers shall be elected by a majority of those present, the accounts submitted and audited, and such other business transacted as may then be necessary; and the chairman of such Board shall, as soon thereafter as possible, transmit to the proper superintendent correct returns of all schools under such Board, together with detailed accounts duly audited, according to the forms in schedules A and B of this chapter prescribed; and any Board neglecting to transmit such return on or before the first day of September in each year shall, on the representation of the proper superintendent, whose duty it shall be to make such representation within one month from the said date, not receive further payments until such default shall be remedied, unless the Governor in Council shall otherwise order.

**38**. General meetings of the said boards may be held at any time at the instance of the chairman, or on requisition to the chairman by any two

or more members; and in case of the chairman refusing or neglecting, upon requisition, to call such meetings within three days after such requisition being delivered to him or left at his house, then such meetings may be called by such requisitionists.

**39**. When any school is held at a distance from the residence of the chairman or members of the board, the board shall nominate one or more persons residing near the school to visit and supervise the same, subject to the order of the board and the provisions of this chapter.

**40**. Any of the said boards may appropriate any surplus funds at their disposal towards the support of any school in other districts which may stand most in need thereof: Provided that such schools shall be subject to inspection and furnish reports similar to other schools supported under this chapter.

**41**. Every appointment of a teacher made by any Board of Education under this chapter, and every vacancy from whatever cause arising, shall be notified by the chairman to the proper superintendent. And it shall be the duty of every chairman of a board to furnish to the proper superintendent, when requested so to do, such information as the latter may require respecting the management of all schools under such board.

### School Property.

**42**. All property of every description, now vested in Boards of Education, the chairman or members of boards, for educational purposes under such boards, shall henceforth vest in the boards of which he or they may be such chairman or members, and their respective successors.

**43**. Boards of Education may purchase, hold, sell, and convey property of every description, as occasion may require, for educational purposes: Provided that in all sales by boards, of lands and tenements, the conveyance to the purchaser shall be in writing and be valid when signed by the chairman and a majority of the members, but no money shall be appropriated for the purchase of land or tenements, or for erection of school-houses, unless the inhabitants of the locality requiring the same shall contribute at least an equal amount in money or kind for that purpose, and no grant shall be made for school-houses where the legal title of the site thereof shall not be vested in the board for the district.

**44**. In case it shall be necessary to prosecute or defend any action at law, suit in equity or other proceeding on behalf of the board, the same may be brought or defended in the name of the chairman, or other person duly authorized by the board.

### Fees.

**45**. The following scale of fees shall be paid quarterly in advance to the teacher by the pupils attending the public schools established under

the provisions of this chapter, which fees shall be the property of the board unless otherwise agreed upon between it and the teacher:—

Each pupil learning subjects enumerated in standards I. and II. of schedule G, in this chapter, at the rate of one dollar per year.

Each pupil learning subjects enumerated in standards III., IV and V., at the rate of one dollar and fifty cents per year.

Each pupil learning subjects enumerated in standard VI., at the rate of two dollars per year.

Each scholar learning navigation shall pay at the rate of four dollars per year

**46**. Any teacher, or chairman of a Board of Education, may recover the said fees and others provided by this chapter, in a summary manner, before a Justice, either in his own name or in that of the board: Provided that nothing herein contained shall prevent the board from remitting the said fees or any part thereof to such persons as may be unable from poverty to pay the same.

## EDUCATIONAL DISTRICTS.

### Church of England.

**47**. The Church of England educational districts shall be as follows:—

The district of St John's shall extend from Cape Race to Cape St. Francis, inclusive.

The district of Portugal Cove shall commence at the east end of Windsor Lake, and shall include Portugal Cove road, Portugal Cove, Belle Isle, and Horse Cove. The board shall meet at Portugal Cove.

The district of Topsail shall commence at Horse Cove, and extend to Indian Pond, inclusive, including Kelley's Island and Little Belle Isle. The board shall meet at Topsail.

Brigus shall extend from Indian Pond, exclusive, to the south side of Northern River in Port-de-Grave, Salmon Cove, inclusive. The board shall meet at Brigus.

Port-de-Grave shall extend from Northern River to Rossel's Brook. The board shall meet at Port-de-Grave.

Bay Roberts shall extend from Rossel's Brook to Spaniard's Bay Pond, inclusive. The board shall meet at Bay Roberts.

Spaniard's Bay shall extend from Spaniard's Bay Pond to Bishop's Cove, exclusive. The board shall meet in Spaniard's Bay.

Upper Island Cove shall extend from Bishop's Cove to Upper Island Cove, both inclusive. The board shall meet in Upper Island Cove.

Harbor Grace shall extend from Upper Island Cove to Mosquito, inclusive. The board shall meet in Harbor Grace.

Carbonear shall extend from Mosquito to Spout Cove. The board shall meet at Carbonear.

Bay-de-Verds shall extend from Spout Cove to Grate's Cove. The board shall meet at Bay-de-Verds.

Heart's Content shall extend from Grate's Cove to Shoal Harbor, inclusive The board shall meet at Heart's Content.

New Harbor shall extend from Shoal Harbor to Centre Cove. The board shall meet at New Harbor.

Random shall extend from Centre Cove, exclusive, to Dark Harbor. The board shall meet at Heart's Ease.

Trinity shall extend from Dark Harbor to Trinity, N. W. Arm, exclusive. The board shall meet at Trinity.

Trinity North shall extend from Trinity, N. W. Arm, to Green Bay, inclusive. The board shall meet at North Side, Trinity.

Trinity Bay East shall extend from Green Bay to Little Catalina, inclusive. The board shall meet at Catalina.

Bonavista Bay South shall extend from Little Catalina to Upper Amherst Cove, inclusive. The board shall meet at Bonavista.

Bonavista Bay West shall extend from Upper Amherst Cove to Open Hall, inclusive. The board shall meet at King's Cove.

Goose Bay shall extend from Open Hall to Clode Sound, inclusive. The board shall meet at Brooklyn.

Salvage shall extend from Clode Sound to Gooseberry Island, inclusive. The board shall meet at Salvage.

Greenspond shall extend from Gooseberry Islands to Ragged Harbor, inclusive. The board shall meet at Greenspond

Fogo shall extend from Ragged Harbor to Change Islands, inclusive, including all islands within the said limits The board shall meet at Fogo

Herring Neck shall extend from Herring Neck to Merritt's Harbor. The board shall meet at Herring Neck.

Change Islands shall extend from Change Islands to Herring Neck, including Dog Bay, Gander Bay and Dildo Run. The board shall meet at Change Islands.

Twillingate shall extend from Merritt's Harbor to Loon Bay, inclusive, including the Islands of Twillingate. The board shall meet at Twillingate.

Exploits shall extend from Loon Bay to Ward's Harbor, inclusive. The board shall meet at Leading Tickles and at Exploits Burnt Island, alternately.

Notre Dame Bay North shall extend from Ward's Harbor to Gull Island. The board shall meet at Little Bay Mines.

White Bay shall extend from Gull Island, exclusive, to Ireland's Bight, inclusive. The board shall meet at Western Cove.

The Straits of Belle Isle shall extend from Ireland's Bight to Caster River, inclusive, and the coast of Labrador from Blanc Sablon to Chateau, inclusive. The board shall meet at Flower's Cove.

Bonne Bay shall extend from Caster River to Trout River, inclusive. The board shall meet in Bonne Bay.

Bay of Islands shall extend from Trout River to Serpentine River, inclusive. The board shall meet in Bay of Islands.

Bay St. George shall extend from Serpentine River to Crabb's Brook, inclusive. The board shall meet at Sandy Point.

Codroy shall extend from Crabb's Brook to Red Rocks, inclusive. The board shall meet at Codroy.

Channel shall extend from Red Rocks to Hiscock's Point, inclusive. The board shall meet at Channel.

Rose Blanche shall extend from Hiscock's Point to Wreck Island, exclusive. The board shall meet at Rose Blanche.

Burgeo shall extend from Wreck Island to Cape La Hune, exclusive. The board shall meet at Burgeo.

Hermitage Bay shall extend from Cape La Hune to Dawson's Cove, inclusive. The board shall meet at Gaultois.

Fortune Bay shall extend from Dawson's Cove to Boxy Point, inclusive, and from Long Harbor Point to Grand Beach, inclusive. The board shall meet at Harbor Briton.

Belloram shall extend from Boxy Point to Long Harbor Point, inclusive. The board shall meet at Belloram.

Lamaline shall extend from Grand Beach, exclusive, to Little St. Lawrence, inclusive. The board shall meet at Lamaline.

Burin shall extend from Little St Lawrence to Rushoon. The board shall meet at Burin.

Placentia Bay shall extend from Rushoon to Cape Race, inclusive. The board shall meet at Harbor Buffett.

Battle Harbor shall extend from Chateau to Spotted Islands, exclusive.

Sandwich Bay shall extend from Spotted Islands to Ilack.

ROMAN CATHOLIC DISTRICTS.

**48**. The Roman Catholic educational districts shall be as follows:—

St. John's shall include the present electoral districts of St John's East and West, and that portion of the electoral district of Harbor Main, extending from Horse Cove to Indian Pond. The Board shall meet at St. John's.

Harbor Main shall extend from Indian Pond to Collier's, both inclusive, and shall include English Cove and James' Cove. Board shall meet at Harbor Main.

Brigus shall extend from Collier's, English Cove and James' Cove, exclusive, to Spaniard's Bay Bridge, including Bay Roberts. Board shall meet at Brigus.

Harbor Grace shall extend from Spaniard's Bay Bridge to Mosquito, inclusive. Board shall meet at Harbor Grace.

Carbonear shall extend from Mosquito, exclusive, to Perry's Cove, inclusive. Board shall meet at Harbor Grace.

Northern Bay shall extend from Perry's Cove, exclusive, to Lower Island Cove, inclusive. Board shall meet at Northern Bay.

Bay-de-Verds shall extend from Lower Island Cove, exclusive, to Old Perlican, inclusive. Board shall meet at Bay-de-Verds.

Trinity South shall extend from Old Perlican, exclusive, to George's Cove, S. W. Arm, Random, exclusive. Board shall meet at Harbor Grace.

Trinity West shall extend from George's Cove, inclusive, to Ship Cove, inclusive. Board shall meet at Trinity.

Trinity North shall extend from Ship Cove, exclusive, to Cape Bonavista, and shall include also that part of the electoral district of Bonavista Bay lying between Cape Bonavista and Burnt Point, at the head of Blackhead Bay. Board shall meet at Bonavista.

Bonavista South shall extend from Burnt Point to Salvage, inclusive. Board shall meet at King's Cove.

Bonavista North shall extend from Salvage to Cape Freels, including all islands within said limits. Board shall meet at Cottell's Island.

Fogo shall include all the electoral district of Fogo, except Cat Harbor, and also Beaver Cove and Herring Neck. Board shall meet at Tilton Harbor.

Fortune Harbor shall extend from Herring Neck, exclusive, to Seal Bay, inclusive, and shall include Twillingate and all other islands within said limits. Board shall meet at Fortune Harbor.

Little Bay shall extend from Badger Bay, inclusive, to the South West Arm of Green Bay, exclusive, including all islands within said limits. Board shall meet at Little Bay.

Coachman's Cove shall extend from South West Arm of Green Bay, inclusive, to the bottom of White Bay. The board shall meet at Coachman's Cove.

Conche shall extend from the bottom of White Bay to St. Barbe, including all islands within said limits. The board shall meet at Conche.

Bay Bulls shall extend from the South Head of Petty Harbor to La Manche River, inclusive. Board shall meet at Witless Ray.

Ferryland shall extend from La Manche, exclusive, to Aquaforte, inclusive. Board shall meet at Ferryland.

Renews shall extend from Fermeuse to Clam Cove, both inclusive. Board shall meet at Renews.

Trepassey shall extend from Cape Race to Peter's River, exclusive. Board shall meet at Trepassey.

St. Mary's shall extend from Peter's River to Mall Bay, both inclusive. Board shall meet at St. Mary's.

Salmonier shall include all that part of the electoral district of Placentia and St. Mary's lying between Admiral's Beach and Mother Rex, both inclusive. Board shall meet at Salmonier.

St. Bride's shall extend from Beckford to Ship Cove, both inclusive. The board shall meet at St. Bride's.

Great Placentia shall include all that part of the electoral district of Placentia and St. Mary's lying between Ship Cove exclusive, and First Beach and Freshwater, both inclusive. Board shall meet at Great Placentia.

Little Placentia shall extend from First Beach and Freshwater to Haystack, including Red Island, Ram's Island, and Ragged Island, and exclusive of Dog Harbor and Brewley. Board shall meet in Little Placentia.

Placentia West shall extend from Haystack to Burnt Island, including Dog Harbor and Brewley, Isle of Valen, Merasheen, and all other islands on the Western Shore, within said limits. Board shall meet at St. Kyran's.

Burin shall extend from Burnt Island, exclusive, to Corbin, inclusive, and shall include Flat Islands, Little Barrisway, Grand Beach and Frenchman's Cove, in the district of Burin, and Oderin in the district of Placentia. Board shall meet at Burin.

St. Lawrence shall include that part of the electoral district of Burin lying between Corbin, exclusive, and Grand Bank, inclusive. Board shall meet at St. Lawrence.

Fortune Bay shall be the present electoral district of Fortune Bay. Board shall meet at Harbor Briton.

Codroy shall include the present electoral district of Burgeo and La Poile, and that portion of the district of St. George extending from Cape Ray to Cape Anguille. The board shall meet at Grand River.

Sandy Point, Bay St. George, shall extend from the Highlands to Sandy Point, including Main River and South Side. The board shall meet at Sandy Point.

Stevenville, Bay St. George, shall extend from Main River to Romaine's River, inclusive. The board shall meet at Stevenville.

Port-au-Port shall extend from Romaine's River to Serpentine River. The board shall meet at Port-au-Port.

Bay of Islands shall extend from Serpentine River to Cape Gregory. The board shall meet at Bay of Islands

Bonne Bay shall extend from Cape Gregory to St. Barbe. The board shall meet at Bonne Bay.

METHODIST DISTRICTS.

**49**. The Methodist educational districts shall be as follows:—

St. John's East shall include that part of the city of St. John's contained within the division of St. John's East electoral district. Board shall meet in St. John's.

St John's West shall include the division of St. John's West electoral district, and the electoral district of Harbor Main. Board shall meet in St. John's.

Pouch Cove shall include that part of the division of St. John's East electoral district which lies outside of the city of St. John's. Board shall meet in Pouch Cove.

Brigus shall consist of that part of the electoral district of Port-de-Grave lying between Cupids, inclusive, and south side of Northern Gut, inclusive. Board shall meet in Cupids.

Port-de-Grave shall include that part of the electoral district of Port-de-Grave lying between south side of Northern Gut, exclusive, and Port-de-Grave, inclusive. Board shall meet in Port-de-Grave.

Bay Roberts shall consist of that part of the electoral district of Harbor Grace lying between Coley's Point, inclusive, and Bryant's Cove, exclusive. Board shall meet in Bay Roberts.

Harbor Grace shall include that part of the electoral district of Harbor Grace lying between Bryant's Cove, exclusive, and south point of Mosquito. Board shall meet in Harbor Grace.

Carbonear shall include the electoral division of Carbonear. Board shall meet in Carbonear.

Freshwater shall include that part of the electoral district of Bay-de-Verds lying between Freshwater, inclusive, and Perry's Cove, inclusive. Board shall meet at Freshwater.

Blackhead shall include that part of the electoral district of Bay-de-Verds lying between Perry's Cove, exclusive, and Adam's Cove, inclusive. Board shall meet at Blackhead.

Western Bay shall include that part of the electoral district of Bay-de-Verds lying between Adam's Cove, exclusive, and Ochre Pit Cove, inclusive. Board shall meet at Western Bay,

Lower Island Cove shall include that part of the electoral district of Bay-de-Verds lying between Ochre Pit Cove, exclusive, and Split Point Board shall meet at Lower Island Cove.

Old Perlican shall extend from Split Point to Selby's Cove, exclusive. Board shall meet at Old Perlican.

Hant's Harbor shall extend from Selby's Cove, inclusive, to Scilly Cove, exclusive. Board shall meet at Hant's Harbor.

Heart's Content shall extend from Scilly Cove, inclusive, to Witless Bay, exclusive. Board shall meet at Heart's Content

Green's Harbor shall extend from Witless Bay, inclusive, to St. Jones Harbor (without), exclusive. Board shall meet at Green's Harbor.

Random South shall extend from St. Jones Harbor (without), inclusive, embracing all of South West Arm and the south side of Random Sound. Board shall meet at Northern Bight.

Random North shall include all places on the main land between Deep Bight, exclusive, and British Harbor, together with that part of Random Island lying between Elliott's Cove, inclusive, and Snook's Harbor, inclusive. Board shall meet at Upper Shoal Harbor.

Britannia Cove shall include Random Island, excepting that part lying between Elliott's Cove, exclusive, and Snook's Harbor, exclusive. Board shall meet at Britannia Cove.

Trinity North shall include that part of the electoral district of Trinity Bay, lying between British Harbor, exclusive, and Catalina South Head, inclusive. Board shall meet at Trinity Harbor.

Catalina shall include that part of the electoral district of Trinity Bay, lying between Catalina South Head, exclusive, and Muddy Brook, exclusive.

Bird Island Cove district shall include all that part of the electoral district of Trinity, lying between Muddy Brook, inclusive, and North Shore, inclusive, and comprising Bird Island Cove and neighboring settlements, situate between Muddy Brook and Bonavista Cape. Board shall meet at Bird Island Cove.

Bonavista South shall include all that part of the electoral district of Trinity, lying between Spillar's Cove, inclusive, and Bonavista Cape, also that part of the electoral district of Bonavista Bay lying between Bonavista, inclusive, and Upper Amherst Cove, inclusive. Board shall meet at Bonavista.

Musgrave Town, Bonavista West, shall extend from Upper Amherst Cove, exclusive, to Salvage, exclusive Board shall meet at Musgrave Town.

Glovertown shall extend from Salvage, inclusive, to Fair Islands, exclusive, and shall include all settlement on the main land, or islands adjacent. Board shall meet at Glovertown.

Greenspond shall extend from Fair Islands, inclusive, to Badger Point, North, and shall include settlements on the main land, or islands adjacent Board shall meet at Greenspond.

Wesleyville shall extend from Badger Brook, North, to Cat Harbor, inclusive. Board shall meet at Wesleyville.

Musgrave Harbor shall extend from Cat Harbor, exclusive, to Apsey Cove, in Hamilton Sound, inclusive. Board shall meet at Musgrave Harbor.

Seldom-come-by shall extend from Apsey Cove, exclusive, to Seldom-come-by, inclusive, and shall include Indian Islands, settlements in Rocky Bay, Noggins Cove, and others on the eastern side of Gander Bay. Board shall meet at Seldom-come-by.

Fogo shall extend from Seldom-come-by, exclusive, to Change Islands, exclusive, and shall include Fogo and other islands within said limits. Board shall meet at Fogo.

Herring Neck shall extend from Change Islands, inclusive, to Marrett's Harbor, inclusive. Board shall meet at Herring Neck.

Twillingate shall include that part of the electoral district of Twillingate, lying between Marrett's Harbor, exclusive, and the islands of Twillingate, inclusive, and between Farewell Harbor and Loon Bay. Board shall meet at Twillingate.

Moreton's Harbor shall include Moreton's Harbor and all other places in the electoral district of Twillingate, lying between Marrett's Harbor, exclusive, Black Island, exclusive, and Gunson's Island, exclusive, and Burnt Bay, inclusive. Board shall meet at Moreton's Harbor.

Little Bay Island shall extend from Leading Tickles, inclusive, to Jackson's Cove, and shall comprise Little Bay and other islands adjacent. Board shall meet at Little Bay Islands.

Nipper's Harbor shall extend from Jackson's Cove, exclusive, to Cape St John. Board shall meet at Nipper's Harbor.

Placentia Bay shall include that part of the electoral district of Placentia and St. Mary's lying between Cape Race and Rushoon, inclusive Board shall meet at Sound Island.

Flat Islands shall extend from Rushoon, exclusive, to Mortier Bay, inclusive, and shall comprise Flat Islands and other settlements adjacent or within their limits. Board shall meet at Flat Islands (Davies Island).

Burin shall include that part of the electoral district of Burin, lying between Mortier Bay, exclusive, and Cape Chapeau Rouge. Board shall meet at Burin.

Fortune shall include that part of the electoral district of Burin, lying between Cape Chapeau Rouge and Fortune, inclusive. Board shall meet at Fortune.

Grand Bank shall include that part of the electoral district of Burin, between Fortune, exclusive, and Frenchman's Cove, inclusive, together with all the electoral district of Fortune Bay. Board shall meet at Grand Bank.

Burgeo shall include that part of the electoral district of Burgeo and La Poile, between Bonne Bay and Knife Bay, both exclusive. Board shall meet at Burgeo.

Petites shall include that part of the electoral district of Burgeo and La Poile, between Knife Bay, inclusive, and Rose Blanche, inclusive. Board shall meet at Petites.

Channel shall include that part of the electoral district of Burgeo and La Poile, between Rose Blanche, exclusive, and Cape Ray. Board shall meet at Channel.

St. George's shall include the electoral district of St. George's. Board shall meet at St. George's Bay, South Side, or at Bay of Islands, by arrangement of chairman.

Bonne Bay shall include that part of the electoral district of St Barbe, lying between the electoral district of St. George and Point Rich. Board shall meet at Bonne Bay.

Flower's Cove shall include that part of the electoral district of St. Barbe, lying between Point Rich and Cape Norman, exclusive. Board shall meet at Flower's Cove.

St. Anthony shall include that part of the electoral district of St. Barbe, lying between Cape Norman, inclusive, and Cape Rouge. Board shall meet at St. Anthony.

Englee shall include that part of the electoral district of St. Barbe, lying between Cape Rouge and Cape John. Board shall meet at Englee.

Labrador South shall include that part of Labrador extending from Blanc Sablon to N. Battle Harbor, inclusive.

Labrador North shall include that part of Labrador extending from N. Battle Harbor, Northward.

### Congregationalist Districts.

**50** The educational districts for Congregationalists shall be two: one of which shall extend from Harbor Main, inclusive, to Cape John, and shall be called the Harbor Grace District; and the other shall comprise all that portion of this island not included in the district of Harbor Grace.

## Training of Teachers.

**51.** The Governor in Council shall appoint, for each denomination, a Board of Examiners, to consist of three or five members of such denomination, of which the Superintendent is hereby constituted chairman, to have power to examine all candidates for the office of pupil teacher and teacher; to prescribe the text-books, scope and mode of examination for each grade; to designate the times and places at which candidates shall present themselves, and to grant a certificate of qualification of first, second, or third grade to any teacher or candidate, in accordance with the provisions prescribed in schedule E of this chapter. But no such certificate shall be valid if the holder thereof shall cease to follow the regular occupation of a teacher for a period of three consecutive years. The Board of Examiners shall have power to cancel the certificate of any teacher for drunkenness or other immoral conduct.

**52.** Every candidate for the position of pupil teacher shall satisfy the requirements of schedule C of this chapter, and if approved by the Board of Examiners of his denomination according to the said schedule, such candidate may be indentured to the proper superintendent according to schedule D.

**53.** Notwithstanding anything in the next preceding section contained, pupil teachers recommended by chairmen of Boards of Education for denominations not having academies or training schools, may be indentured to either the Church of England or Methodist Superintendent.

**54.** Minors may be parties to such indentures, which shall be binding upon all parties thereto, as if such minors had been of full age at the time of executing the same.

**55.** The course of training may extend over one, two or three years, as the Board of Examiners shall determine: Provided always, that the said board may, if the pupil teacher be found qualified to obtain it, grant a certificate at any time during his term of training.

**56.** Pupil teachers shall be required to pass a half-yearly examination before the board. The principals of the schools in which they are being trained shall submit to the proper superintendent a half-yearly report of their general progress and conduct; and should the examination of any pupil teacher, or such report, prove unsatisfactory, such pupil teacher may be admonished or dismissed, as the Board of Examiners shall determine.

**57.** The recognized institutions for training teachers shall be the Roman Catholic College, for male pupil teachers of the Roman Catholic denomination, and the Presentation Convent in St. John's East, for females; the Church of England College and the Central Training School

of the Colonial and Continental Church Society for pupil teachers of the Church of England; the Methodist College for pupil teachers of the Methodist Church; the General Protestant College and the Congregational Training Schools in St. John's.

**58**. A certificated teacher, of good character, desiring to qualify for a higher grade may, on the recommendation of the proper superintendent, be admitted into any recognized college or training school for a period not exceeding twelve months, subject to the conditions prescribed in schedule I of this chapter.

**59**. No teacher shall be employed for the public schools provided for in this chapter, who does not hold a recognized certificate of grade. Persons not holding such certificates may be employed as teachers for a period not exceeding six months; notice of such employment shall be communicated by the chairman to the proper superintendent within one month from the date thereof, in order that arrangements may be made for the examination of such persons; and if, after examination, they fail to obtain a certificate of grade, they shall be deemed disqualified to act as teachers in public schools until they obtain a certificate

### Employment of Teachers.

**60**. All teachers shall be engaged according to the form provided for in schedule F of this chapter, and a notice in writing, of three months shall be deemed necessary when a board shall no longer require the services of a teacher, or when a teacher desires to resign his situation; but any teacher found guilty of drunkenness or other immorality may be summarily dismissed by the board without such notice.

### School Year.

**61** Teachers in public schools when engaged for a year shall be required to keep school for two hundred and twenty whole days, which period shall be called the "School Year," and salaries of teachers shall be computed per quarter upon the basis of two hundred and twenty days for the school year.

### Duties of Teachers

**62**. It shall be the duty of every teacher of a public school,—

(*a.*) To teach diligently and faithfully all branches required to be taught in the school, according to the terms of his engagement with the board, and according to the provisions of this chapter, and the authorized regulations under it;

(*b*) To keep in the prescribed form the general entrance, and the daily and other registers of the school. He shall record therein the admission, promotion, removal, or otherwise, of the pupils of his school;

(*c*) To keep a visitors' book, which the board shall provide, and enter therein the visits made to the school, and to present said book to every visitor, and request him to make therein any remarks concerning the school suggested by his visit;

(*d*) To maintain proper order and discipline in his school, according to the approved regulations of the board;

(*e*) To give the board and visitors access at all times when desired by them to the register and visitors' book appertaining to the school;

(*f*) To deliver up any school registers, visitor's book, school-house key, or other school property in his possession, on the written demand or order of the chairman, or, in his absence, of a majority of the board employing him. In case of his wilfully refusing to do so, he shall not be deemed a duly qualified teacher, and may be suspended until restitution be made;

(*g*) To have at the end of every half-year, where practicable, a public examination of his school, of which he shall give due notice to the board, to any school visitors who reside near the school, and through the pupils to their parents and guardians;

(*h*) To furnish the superintendent for his denomination, when desired, any information which may be in his power to give respecting anything connected with the operations of his school, or in any wise affecting its interest or condition;

(*i*) To make an annual return for his school to the chairman of the board, according to the form in schedule B of this chapter prescribed;

(*j*) To set apart, with the approval of the board, the last Thursday of May or the first Thursday of June in each year, or, if unsuitable, any suitable day before or afterwards, to be observed as an arbor day by the school, for improving or beautifying the school grounds by planting trees, shrubs, flowers, &c. A particular account of the day's proceeding shall be forwarded to the superintendent, and where duly observed, credit shall be given to the pupils for attendance as on an ordinary teaching day.

**63.** No teacher, in any college, academy or school aided by moneys granted under this chapter, shall impart to any child attending the same any religious instruction which may be objected to by the parent or guardian of such child.

### Teachers' Pension Fund.

**64.** For the purpose of providing for the retirement of all teachers of public schools upon their reaching the age of sixty years, there shall be established a fund, to be known as "The Teachers' Pension Fund," in the manner hereinafter specified, that is to say:—

(1.) From the appropriation made under section 14 of this chapter to each teacher who has received a certificate of grade from any Board of Examiners appointed under this chapter, the Governor in Council shall deduct, every six months, one half of the annual premium required to be paid by such teacher, according to age, as fixed in the six per cent. columns in schedules J and K of this chapter, which sums so deducted shall be deposited in the Savings' Bank of this colony to the credit of the said fund.

(2.) Upon the amount accumulated to the credit of the fund at the beginning of each calendar year, there shall be allowed by the Government interest for the ensuing twelve months at the rate of three per cent., in addition to the interest paid by the Savings' Bank, which amount of interest so allowed by the Government shall be deposited to the credit of the said fund in the Savings Bank.

(3.) In consideration of the regular payment of the annual premiums provided for in sub-section 1. each male teacher shall, upon reaching the age of sixty years, be entitled to receive a pension of one hundred dollars per annum during the remainder of his life, and each female teacher, during the remainder of her life, a pension of eighty dollars.

(4.) The Governor in Council shall be the trustee and manager of this fund, which shall be deposited in the Savings' Bank; and the pensions shall be paid quarterly during the lifetime of the respective pensioners, at the office of the said Bank, upon the order of the Colonial Secretary. An annual report of the condition of the fund shall be laid before the Legislature within one month after the opening of the next succeeding session.

(5.) In case of the death of any contributor to this fund before he shall have entered upon his pension, the whole sum he has

contributed, with compound interest at three per cent., shall be returned to his legal representatives; provided he has not forfeited his claim under sub-sections 9 and 13.

(6.) Any contributor to this fund who shall cease to follow the occupation of a teacher, shall be permitted, provided he has made twenty annual payments to the fund, to secure to himself the pension by paying thenceforth, until he arrive at the age of sixty years, the annual premium fixed for his age at entrance as stated in the three per cent. columns contained in schedules J. and K of this chapter.

(7.) After the provisions relating to this fund shall have come into operation any contributor thereto who shall cease to follow the occupation of a teacher, after five full years' service as such and payment of five annual premiums, shall be permitted to withdraw from the fund all his contributions with interest at three per cent.

(8.) Should any contributor to this fund, who has taught a public school for a period of five full years, after this scheme has come into operation, cease to follow the occupation of a teacher for not more than two years, he shall, if he again become a teacher of a public school within the said period of two years, and have not withdrawn his deposits, as provided fer in sub-section 7, resume his connection with this fund by paying his arrears of contributions with compound interest at six per cent.

(9.) Should any contributor to this fund, who has taught a public school for a period of less than five full years, cease to follow the occupation of a teacher, he shall forfeit all claim upon this fund, and if he again become a teacher shall resume his connection with the fund by paying the annual premium based upon his age at re-entrance: Provided that, where such teacher has retired owing to failure of health, he shall, if he again become a teacher within two years of the date of his retirement, resume his connection with the fund on his former footing, without such forfeit, by payment of his arrears with compound interest at six per cent.

(10.) No teacher beyond the age of forty years shall be permitted to become a contributor to this fund: Provided this shall not apply to teachers over forty years employed at the time of the passing of this chapter; such teachers shall have the option of becoming contributors to this fund within a period of two years therefrom by signifying their desire in writing to the managers of the fund.

(11.) All premiums required in connection with this fund shall be paid in half-yearly instalments on the 30th day of June and the 31st day of December in each year. Teachers on first being employed if they have taught for less than six months at either of the above dates shall pay proportionate parts thereof.

(12.) For the purposes of this fund, the age of every teacher contributing thereto shall be taken to be his age on his birthday nearest to the date of his employment as a teacher.

(13.) Any teacher whose certificate has been cancelled for drunkenness, or other immoral conduct, shall forfeit all claim upon this fund.

**65**. No payments shall be made from this fund except in accordance with the provisions of the next preceding section.

**66**. After the lapse of twenty years from the passing of this chapter, any funds which shall be found to have accumulated over and above the amount necessary to secure the payment of all claims provided for in section 64 shall be applied either in diminution of the future annual premiums of the contributors, or in augmentation of their pensions, as the trustee and manager of this fund shall determine.

**67**. The provisions of section 64 shall not apply to teachers who are members of any religious order, unless they so desire.

**68**. The provisions of this chapter relating to the Teachers' Pension Fund shall come into operation on and after the first day of July, A. D. 1892.

### Visitation of Schools.

**69**. The Board shall, either collectively or in part, visit each school under its jurisdiction every half-year, except schools referred to in section 39 of this chapter.

**70**. Judges, members of the Legislature, clergymen, and members of the other learned professions, justices of the peace and grand jurors, shall be school visitors and may attend the examination of schools provided for in this chapter.

### Superintendents.

**71**. The Governor in Council may nominate and appoint three Superintendents of Education; one of whom shall be a member of the Church of England, for the supervision and inspection of Church of England

schools; one, a member of the Roman Catholic Church, for the supervision and inspection of Roman Catholic schools; and one, a member of the Methodist Church, for the supervision and inspection of Methodist schools. Each of the said superintendents shall be sworn before a justice well and faithfully to discharge the duties of his office. It shall also be the duty of the Church of England and Methodist superintendents to inspect in alternate years the other Protestant board schools provided for by this chapter; for which inspection they shall be paid the amount appropriated under section 10 of this chapter, in equal proportions, less the amount to be paid for Presbyterian and Congregational inspection hereinafter mentioned: Provided the Governor in Council shall nominate and appoint a member of the Presbyterian Church and a member of the Congregational Church to inspect and report annually upon all schools of their respective denominations, for which inspection they shall be paid from the amount appropriated under section 10 of this chapter.

### Duties of Superintendents.

**72**. It shall be the duty of the superintendents, and they are hereby empowered,—

(1.) To have, subject to the Governor in Council, a general supervision and direction of all schools and training schools of their respective denominations, receiving aid from Government, and to enfore the provisions of this chapter and the regulations and decisions of the Governor in Council in reference to the same, and to forward to chairmen of boards all necessary forms of returns as provided for in this chapter.

(2.) To prescribe, subject to the approval of the Governor in Council, the duties of assistants provided for in section 9 of this chapter.

(3.) And with their aid to visit if possible, annually, each school, training institution, and college or academy, of their respective denominations, and to examine the state and condition thereof, as respects the qualifications of the teachers, the system of instruction pursued, the order and discipline observed, the mode of keeping the school registers, the average attendance of the pupils, the progress of the pupils in learning, the suitability and condition of the buildings and premises; to give such advice as they may judge proper to teachers and boards; to do all in their power to carry out a uniform system of education, and by public addresses or otherwise, to improve the character and efficiency of existing public schools, and promote the establishment of other public schools in destitute localities.

(4.) To prepare, annually, a report of all schools, training institutions, colleges and academies, of their respective denominations, ac-

companied with full statistical tables, and detailed accounts of income and expenditure, and breaches of this chapter and dereliction of duty, to offer suggestions on all educational subjects, as they may deem proper which report shall be laid before the Legislature in printed form within one month after the opening of the next succeeding session.

**73**. The Governor in Council may, from time to time, upon the recommendation of the several superintendents, authorize any person other than the proper superintendent to visit, examine and report upon any of the board schools provided for in this chapter, and such report shall be embodied in the annual report of the proper superintendent of the denominations to which the several schools so inspected belong.

### Harbor Grace Grammar School.

**74**. (1.) The Governor in Council may appoint seven persons to be a Board of Commissioners to expend the money granted by section 11 of this chapter, and for the management of the Harbor Grace Grammar School; and such board shall be a body corporate and politic by the name of "The Commissioners of the Harbor Grace Grammar School," and shall have a common seal, with full power to make, alter, and change the same, and shall have perpetual succession, and full power to sue and be sued, implead and be impleaded, answer and be answered unto, in all courts within this island, and to take, hold, and convey all lands, moneys, and chattels, and to do and execute all such other matters as to such board shall appertain.

(2.) When a vacancy shall occur in the number of the said board by the death, resignation, or absence from the colony for twelve months, of any member, the Governor in Council may fill up such vacancy.

(3.) Of the said Board of Commissioners five shall be a quorum; and the said board shall have authority to appoint a master, and, if necessary, an assistant teacher to the said school, and the same upon reasonable cause to remove, to fix the salary of such teacher, to prescribe the various branches of learning other than those hereinafter enumerated to be taught by the said teachers, to appoint the times and hours of attendance at the said school, to establish the rates of fees to be paid by pupils attending the same, and to appropriate the said fees to the purposes of this school, and to make such rules and bye-laws for the regulation of their own proceedings and of such matters connected with the management of the said school, as are not herein otherwise provided for, which rules and bye-laws shall be submitted to the Governor in Council for approval or amendment

(4.) The following branches shall be taught in the said school, that is to say:—the classics, mathematics, and navigation, and no books or treaties shall be used in the said school other than such as shall have received the approval and allowance of the said Board of Commissioners.

(5.) There shall be kept in the said school a report and register book, in the former of which shall be entered the remarks and observations of the commissioners and visitors of the said school, with the names and number of the pupils attending from day to day at the several classes therein; in the latter, the names, ages, and places of residence of the several pupils, the dates of their admission, respectively, the courses of education entered upon, and the progress made by them, respectively, and the date of the withdrawal of each pupil.

(6.) The said board shall, on or before the first day of September in each year, transmit to the proper superintendent, a report of the progress and condition of the said school, which report shall, among other matters, contain a statement of the several branches of education taught in the said school, and of the books used in the same; of the classes into which the said school is divided, and the number of pupils attending in each class, together with an account of the amount and appropriation of all fees which, during the time included in the said report, have been paid by the pupils.

COLLEGES.

**75**. There shall be established in St. John's, for higher education, a Church of England College and a Methodist College, for both sexes, and a Roman Catholic College, for males. And such colleges shall be annually inspected and reported upon by the superintendents of the respective denominations, as in the case of the other schools receiving aid from the Government under this chapter.

**76**. There shall be Boards of Education for the said several colleges, to be appointed by the Governor in Council, which boards shall be bodies corporate and politic. The Board of the Roman Catholic College shall consist of nine members, a majority of whom shall form a quorum, and shall be known by the name of the "Directors of the Roman Catholic College" The Board of the General Protestant College shall consist of nine members, six of whom shall be Presbyterians and three Congregationalists, two members of the said boards to be ministers of the Presbyterian Church and one member to be a minister of the Congregational Church; a majority of the board shall be a quorum, and said board shall be known by the name of the "Directors of the General Protestant College." The Board of the Church of England College shall consist of any number of members not exceeding twenty-one, to be nominated as hereinafter set

forth, and shall be known as the "Directors of the Church of England College." The Board of the Methodist College shall be known as the "Governors of the Methodist College," and shall consist of any number of members not exceeding forty, to be appointed as hereinafter set forth. Each board shall have a common seal, with full power to make, alter and change the same, and shall have perpetual succession and full power to sue and be sued, implead and be impleaded, answer and be answered unto, in all courts within this island, and to take, hold, and convey, all lands, monies and chattels, and to do and execute all such other matters and things as to each of the said boards shall appertain. The directors of the Church of England and of the Roman Catholic College and governors of the Methodist College shall be members of these denominations respectively.

**77.** The directors of the Church of England College shall be nominated by the Diocesan Synod of the Church of England, and the names of such persons as shall from time to time be so nominated, shall be certified by the Secretary of the Synod to the Colonial Secretary within one month of such nomination. It shall be lawful for such directors to depute the general control and management of the college to an executive body selected from themselves, and not exceeding nine in number.

**78.** The governors of the Methodist College shall be nominated by the Newfoundland Conference of the Methodist Church, and the names of such governors as nominated from time to time shall be certified under the seal of the said conference, and such certificate shall be forwarded, within one month from such nomination, to the Colonial Secretary of this Island. It shall be lawful for the governors of the Methodist College to depute the general control and management of the institution to an executive body selected from themselves, and not exceeding eleven in number.

**79.** Each of the said boards shall have the power to appoint a head master and other teachers of their respective denominations for their respective colleges, to prescribe the various branches of learning to be taught, and the terms and vacations to be kept in the said colleges, to fix the rates of fees to be paid by the students, subject to the approval of the Governor in Council, and to appropriate such fees, either towards increasing the salary of the said teachers or towards defraying the incidental expenses of their respective colleges, and also to make such bye-laws and rules for regulating their own proceedings and for the efficient management of their respective colleges as may be necessary, which bye-laws and rules shall be subject to the approval of the Governor in Council.

**80.** The said boards shall, on or before the first day of September in each year, transmit to their respective superintendents, reports of the condition and progress of their college and a detailed account, duly audited, of income and expenditure to be laid before the Legislature, in accordance with forms prescribed in schedules A and H of this chapter.

**81.** The Governor shall have the power to visit all colleges and schools.

**82.** For the advancement and encouragement of higher education there shall be established, in each of the Church of England, Roman Catholic, and Methodist Colleges, three scholarships, the holders of which shall be entitled to tuition without fees for a period not exceeding three years in the colleges of their respective denominations. Such scholarships shall be awarded according to merit by the directors and governors of the several colleges to candidates who shall be certified by the proper superintendent as having passed an examination in standard V of schedule G.

**83.** Colleges shall afford facilities for the illustration and practice of the most approved methods of teaching, and of the organization and management of schools, to such pupil teachers as shall be duly appointed to be trained therein.

**84.** The Governor in Council may appoint Boards of Directors for denominations other than the Church of England, Roman Catholics and Methodist, Presbyterians and Congregationalists for the purpose of expending the moneys appropriated under section 13 of this chapter.

**85.** The Governor in Council shall appropriate, annually, the sum of four hundred and eighty dollars for the institution of a scholarship in the London University, to be given and awarded to the student who shall take the highest place amongst competitors in this colony at the matriculation examination holden in June of any year, and where there shall be no competition, then such scholarship shall be awarded to the student who shall pass in such examination: Provided that such student shall be a native of this colony, or shall have resided in it for five years preceding such examination, and shall have studied in schools, grammar schools, academies or colleges of this colony, for which moneys are appropriated under this chapter, and provided that such student shall, for two years thereafter, prosecute his or her studies at some British University. Such scholarship shall be known as the "Newfoundland Jubilee Scholarship," and shall be tenable for only two years by the student winning the same. Notice of time and place of examination for such scholarship shall be published in the *Royal Gazette*, at least three months previous to such examination.

**86.** The term "Board of Education" in this chapter shall mean only such boards as have been or may be appointed under sections 17, 23, 25, 27, 28, 29, 30, 31, 32 and 33 of this chapter; "District," unless otherwise specified, shall mean educational district; and "Public Schools" shall mean all schools participating in appropriations under this chapter, with the exception of the institutions established under sections 74 and 75 of this chapter.

**87.** This chapter may be cited as "The Eduction Act, 1892."

# SCHEDULES.

## SCHEDULE A.

**Account of Income and Expenditure of the Board of Education for the District of , for the year ending June 30, 18 , showing the amount actually received and actually disbursed during the year.**

| INCOME. | $ | c. |
|---|---|---|
| 1.—To balance in hand from previous year ... ... ... ... ... | | |
| 2.— " Legislative grant for general educational purposes ... ... ... | | |
| 3.— " Legislative grant for books, &c. ... ... ... ... ... | | |
| 4.— " Amount received from Poor Districts' grant ... ... ... | | |
| 5.— " Amount received from Higher Education grant ... ... ... | | |
| 6.— " Other Legislative appropriations (specify them) ... ... ... | | |
| 7.— " Receipts from fees ... ... ... ... ... ... ... | | |
| 8.— " Voluntary contributions and donations ... ... ... ... | | |
| 9.— " Receipts from other sources (specify them) ... ... ... ... | | |
| Total income for year ... ... ... ... ... | | |
| Balance on June 30, 18 , (if overdrawn) ... ... ... ... ... | | |

| EXPENDITURE. | $ | c. |
|---|---|---|
| 1.—By balance on July 1, 18 , (if overdrawn) ... ... ... ... | | |
| 2.— " Salaries to Teachers, namely :— | | |
| *Teacher.* *School.* *Amount.* | | |
| ..... ..... ..... | | |
| ..... ..... ..... | | |
| ..... ..... ..... | | |
| ..... ..... ..... | | |
| 3.— " Salary to Secretary (if paid) ... ... ... ... ... ... | | |
| 4.— " Books, maps, globes, &c. ... ... ... ... ... ... | | |
| 5.— " Furniture and other apparatus ... ... ... ... ... | | |
| 6.— " Insurance on school property ... ... ... ... ... | | |
| 7.— " Fuel, light, &c. ... ... ... ... ... ... ... ... ... | | |
| 8.— " Repairs ... ... ... ... ... ... ... ... ... | | |
| 9.— " Rents ... ... ... ... ... ... ... ... ... | | |
| 10.— " Building school-houses (including purchase of sites) ... ... | | |
| 11.— " Incidentals ... ... ... ... ... ... ... ... | | |
| Total expenditure for year ... ... ... ... | | |
| Balance on hand June 30, 18 , (if in hand) ... ... ... ... | | |

I hereby certify that the foregoing is a true account of income and expenditure on account of the Board of Education for the District of , for the year ended June 30, 18 .

..... ..... *Chairman.*

Audited and found correct, this day of , 18 .

..... .....
..... ..... } *Auditors.*

## SCHEDULE B.

**Education Return for the**

*District.* *School.*

| ——— | No. of Pupils Registered each Quarter. | | | | | | Whole No. under Tuition within year. | | |
|---|---|---|---|---|---|---|---|---|---|
| | No. under 5. | No. between 5 and 15. | No. over 15. | No. of Boys. | No. of Girls. | Total Pupils. | Boys. | Girls. | Total. |
| 1st quarter ... ... | | | | | | | | | |
| 2nd quarter ... ... | | | | | | | | | |
| 3rd quarter ... ... | | | | | | | | | |
| 4th quarter ... ... | | | | | | | | | |
| Annual average Statement. | | | | | | | | | |

## SCHEDULE B.—(Continued.)

| ——— | Salary. | | | | | | Reading. | | | | | | Writing. | | Arithmetic. | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | From Board. | From fees. | From bonus. | From Supplétal Grant. | From other sources. | Total. | Standard I. | Standard II. | Standard III. | Standard IV. | Standard V. | Standard VI. | On slates. | On copy-books. | Standards I and II. | Standards III and IV. | Standards V and VI. |
| 1st quarter ... ... | | | | | | | | | | | | | | | | | |
| 2nd quarter ... ... | | | | | | | | | | | | | | | | | |
| 3rd quarter ... ... | | | | | | | | | | | | | | | | | |
| 4th quarter ... ... | | | | | | | | | | | | | | | | | |
| Annual average Statement. | | | | | | | | | | | | | | | | | |

**Year ending June 30, 18 .**

..... *Teacher.* ..... *Grade.* ..... *Salary.*

| Attendance. | | | | | Apparatus. | | | |
|---|---|---|---|---|---|---|---|---|
| Grand total attendances made by all pupils morning and afternoon. | Times the school has been opened during the quarter. | Average attendance for quarter. | No. of pupils for whom suitable accommodation in school is provided. | No. of visits by members of the Board. | No. of visits by other school visitors. | Square feet of blackboard in school. | No. of maps in school. | No. of Globes. | Other apparatus. |
| | | | | | | | | | |
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| | | | | | | | | | |

| Geography | Grammar. | | History. | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Standards III and IV. | Standards V and VI. | Standards III and IV. | Standards V and VI. | Composition. | British History. | History of Nfld. | Book-keeping. | Mensuration. | Geometry. | Navigation. | Algebra. | Drawing. | Needle-work. | Vocal Music. | Other subjects, if taught | Fees. | Trees planted. | Remarks. |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
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## SCHEDULE C.

### Regulations for the Admission of Pupil Teachers.

1. Every candidate shall be at least fifteen years of age.

2. Shall produce a certificate of good character from the chairman of the Education Board or from some clergyman of his denomination for the district in which he resides.

3. Shall be free from any serious bodily defect and shall produce a certificate of good health satisfactory to the Board of Examiners; and

4. Shall pass a satisfactory examination in the following subjects, namely:—

*Reading*—To read fluently and correctly a paragraph from a fifth standard book.

*Writing*—To write in a neat hand, with correct spelling, a paragraph from a fifth standard book, slowly.

*Arithmetic*—To have a good knowledge of the simple and compound rules, bills of parcels, simple proportion, and some facility in mental arithmetic.

*Grammar*—To have a knowledge of the different parts of speech, with their ordinary inflections.

*Geography*—To have an elementary knowledge of the outlines of the world, and particularly of Newfoundland.

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## SCHEDULE D.

This indenture, made at , in the island of Newfoundland, this day of , in the year of our Lord one thousand eight hundred and , between as Superintendent of Schools, of the first part, of of the second part, and of , of the third part:

Witnesseth that, for the consideration hereinafter mentioned the said parties of the second and third parts, jointly and severally covenant with the said party of the first part, that the said party of the second part shall become a pupil teacher, in order to receive a special course of instruction in the business of teaching in the in, , and shall continue as such pupil teacher for a term of one, two, or three years, or such portion thereof as shall be determined by the Board of Examiners.

*Secondly,*—That the said party of the second part shall, during the aforesaid term diligently apply self to all the studies appointed to , and further observe all the regulations that are or may be adopted in connection with the said college or school, for the government and training of pupil teachers.

*Thirdly,*—That the said party of the second part shall, immediately upon the completion of the aforesaid term of training, serve as teacher in a public school in the district in which he was resident at the time of his entrance; or, if not required in such district, in some other school of his denomination receiving aid from Government, for a period of at least three years; or, if course of training shall have extended beyond two years, serve as a teacher one and a half times as long as the term of training.

And the said , as Superintendent of schools, on behalf of the Government, covenants with the said party of the second part—

*Firstly,*—That there shall be paid quarterly, during the said term, towards the maintenance and training of the said party of the second part, as such pupil teacher, the sum of , in accordance with the provisions of the law in existence for the time being relative to pupil teachers.

*Secondly,*—That all needful training shall be furnished the said party of the second part during pupil teachership, at the ordinary rate of charges for tuition in the

And the said parties of the second and third parts hereby jointly and severally covenant with the said Superintendent of schools aforesaid, and his successors in office, that in case of a breach in this contract by the said party of the second part in any matter or thing whatsoever, or in case of the said party of the second part not conforming to the rules made for the government and training of pupil teachers, or being dismissed by the Board of Examiners for misconduct, to pay the said , as Superintendent, or his successors in office, the sum of $400, or such proportion thereof as the unexpired period of service bears to the whole period of service, as liquidated damages, and not as penalty, as if the said sum were assigned as liquidated damages for the specific breach of any separate provision herein contained.

In witness whereof the said parties have hereunto subscribed and set their hands and seals, at St. John's, aforesaid, the day and year first above written.

Signed, sealed, and delivered, )
in presence of ) [L. S.]

## SCHEDULE E.

### SYLLABUS FOR GRADING TEACHERS.

#### General Regulations.

1. Every candidate shall be at least 16 years of age, in good health, and of unexceptionable moral character.

2. Shall have been a pupil teacher, or shall have gone through a special course of instruction in one of the training or other institutions provided for by this chapter; or

3. Shall have been trained in some other recognized training or normal school abroad; or

4. Shall be a graduate of any chartered college or university; or

5. Shall have been engaged under the provisions of section 59 of this chapter.

6. Shall be acquainted with the provisions of this chapter, particularly those pertaining to the duties of teachers.

7. Shall have a knowledge of school organization, comprising the classification of pupils, the arrangement of studies, the real object and necessity, as well as the best means of discipline, and of securing the health and comfort of the pupils.

8. Shall have a knowledge of approved methods of teaching, and be able to illustrate the same by actual practice.

#### Grade III.—Language.

*Reading.*—To read with distinct utterance and due attention to punctuation.

*Spelling.*—To spell correctly words selected or used by them in examination.

*English Grammar.*—To parse fully any simple sentence, and apply the rules of syntax.

*Composition.*—To write a composition from a short narrative read.

#### History and Geography.

*History.*—Outlines of English history, and history of Newfoundland

*Geography.*—To be acquainted with elementary geography, particularly that of Newfoundland, and be able to draw from memory an outline map of the island.

MATHEMATICS.

*Arithmetic.*—To have a knowledge of the ordinary rules, from an elementary text-book, up to vulgar and decimal fractions, with simple interest inclusive, with readiness in mental arithmetic.

GRADE II.—LANGUAGE.

*Reading.*—To read with fluency, ease and expression, and to recite thirty consecutive lines from any standard poet.

*English Grammar.*—To understand thoroughly the classification and inflection of words, and to parse and analyse any ordinary sentence.

*Composition.*—To write a composition from a narrative read, or on any given familiar subject.

*Music and Drill.*

HISTORY AND GEOGRAPHY.

*History.*—To have a fair knowledge of British history and of the history of Newfoundland.

*Geography.*—To have a fair knowledge of the geography of the world, particularly of Europe and America, and to be able to draw outline maps of the same.

MATHEMATICS.

*Arithmetic.*—To have a good knowledge of vulgar and decimal fractions, simple and compound proportion and simple and compound interest, from an ordinary advanced text-book, with increased readiness in mental arithmetic.

*Book-keeping.*—To understand the keeping of accounts by single entry

*Drawing.*—Elementary.

*Euclid.*—Book I.

*Algebra.*—To the end of fractions and simple equations of one unknown quantity, with problems involved therein.

GRADE I.—LANGUAGE.

*Reading.*—To read a passage in prose, and another in verse, with distinct utterance, correct pronunciation, proper pauses, fluency and expression, and to recite, correctly and with taste, forty lines of poetry or prose from memory.

*English Language.*—(*a*) To parse, analyse, and paraphrase any given sentence, and to have a knowledge of the outlines of the history of English literature; (*b*) To prepare an original essay upon any given subject.

*History.*—To have a good knowledge of British history and the history of Newfoundland.

*Geography.*—To draw from memory an outline map of any of the continents, with the mountain ranges and chief rivers accurately marked, and to have a good knowledge of the general geography of the world.

MATHEMATICS.

*Arithmetic.*—To have a complete knowledge of the several rules of an advanced text-book.

*Algebra.*—Involution, evolution, deeds and invoices, ratio and proportion, end of quadratic equation.

*Euclid.*—Books I. to IV., inclusive.

*Practical Mathematics.*—Mensuration of surfaces and simple solids, navigation, land surveying, and book-keeping by single and double entry.

*Drawing.*—More advanced.

*Music and Drill*

HONOURS.

A candidate for any certificate may receive honourable mention for acquaintance with vocal or instrumental music, or any of the languages, or branches of natural science, or of mathematics not enumerated in the above curriculum.

Females of second grade are not required to pass examination in algebra and euclid, but credit will be given for any acquaintance shown therein.

Females of first grade are required to pass an examination in euclid, book one, algebra to the end of vulgar fractions and simple equations of one unknown quantity and book-keeping by single entry.

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## SCHEDULE F.

FORM OF ENGAGEMENT OF TEACHER.

This agreement, made this day of , A. D. one thousand eight hundred and between , Chairman of the Board of Education at , and

Witnesseth, that the said agrees to serve the said chairman and Board as teacher of school under the said Board, according

to all the rules, regulations and bye-laws now in existence, or which may hereafter be adopted by the said Board in relation to its teachers and the government of its schools, and further diligently to apply himself to all the duties of a teacher aforesaid; and in consideration of such services being well and faithfully performed, to the satisfaction of the said Board, the said chairman agrees, on behalf of the said Board, to pay the said the anuual salary of $ , by equal quarterly payments on the day of , on the day of , on the day of , and on the day of , so long as he shall continue as such teacher in such school.

And further, it is hereby agreed between the said parties to these presents, that this agreement shall be subject to termination in accordance with rules, regulations and bye-laws of the said Board.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, on the day and year hereinbefore mentioned.

A. B., Teacher, [L S.]

C. D., Chairman, [L.S.]

Signed, sealed, and delivered, in presence of

F. G., Witness.

# SCHEDULE G.

## Standard for the Grading of Schools.

| | Subjects. | Reading and Spelling. | Writing. | Arithmetic. | Grammar. | Composition. | Geography. | History. | Remarks. |
|---|---|---|---|---|---|---|---|---|---|
| First Grade. Second Grade. Third Grade. | Standard I. | To read in Monosyllables. | To print letters or figures on slates. | Simple exercises in arithmetic, ball frames, &c. | | | | | It will be seen by reference to this Sequedule that in Third Grade scholars are required to pass in Standards I, II and III; and in the Second Grade, in Standards I, II, III and IV; and in the First Grade they are required to pass in all the Standards. |
| | II. | To read a paragraph from an elementary book. | To transcribe correctly a sentence. | Simple addition and subtraction and multiplication tables to six times twelve. | | | | | |
| | III. | To read with intelligence a short paragraph from a more advanced Class-book. | To write on slates from dictation a sentence correctly and neatly and in copy-books elements and simple letters. | To work an exercise in any of the compound rules. | | | Elementary, particularly map of Newfoundland. | | The subjects prescribed in this Schedule are regarded as essentials. Schools in which singing, drawing, drill, book-keeping, geometry, algebra, navigation, the languages, or other higher branches are taught, will receive honorable mention. |
| | IV. | To read with accuracy a passage in poetry or prose. | Copy-books to show improvement. | Practice, bills of parcels and simple proportion. | To point out nouns, verbs & adjectives, and tell their relation in a sentence. | Easy composition. | Outlines of Western Hemisphere, particularly British North America | Introductory. | |
| | V. | To read with fluency and expression a passage in poetry or prose. | Same as above. | Simple interest, vulgar and decimal fractions. | Parsing and analysis of simple sentences. | To write from memory the substance of a story read out twice. | Outlines of Eastern Hemisphere, particularly the British Isles. | History of Nfld. | |
| | VI. | To read and recite with taste and expression. | Same as above. | Compound interest, compound proportion and discount. | Parsing and analysis advanced. | Original. | The world, with map-drawing. | British History. | Two-thirds of those in attendance will be required to pass in each Standard in order to qualify for any Grade. |

## SCHEDULE H.

**Return of Colleges, Academies or Grammar Schools, for the year ending June 30th, 18 .**

.....College (or School), .....Head Master or Principal. Salary, $.....
First Assistant. " $.....
Second Assistant. " $.....

| | Pupils, Ages, &c. | | | | | Whole Number Pupils under instruction during the year. | | | Attendance. | | | | Pupil Teachers where admitted by law. | | | | |

## SCHEDULE I.

This indenture, made at St. John's, in the island of Newfoundland, this day of , in the year of our Lord one thousand eight hundred and , between , as Superintendent of schools, of the first part of , Certificated Teacher, of the second part, and , of , of the third part.

Witnesseth that, for the considerations hereinafter mentioned, the said parties of the second and third parts, jointly and severally covenant with the said party of the first part, that the said party of the second part shall be admitted into the in , in order to receive a special course of instruction in the business of teaching, for a period not exceeding twelve months.

*Secondly,*—That the said party of the second part shall, during the aforesaid term diligently apply self to all the studies appointed to , and further observe all the regulations that are or may be adopted in connection with the said College (or Training School) for the government and training of teachers.

*Thirdly,*—That the said party of the second part shall, immediately upon the completion of the aforesaid term of training, serve as a teacher in a public school of denomination for at least eighteen months.

And the said , as Superintendent of Schools, on behalf of the Government, covenants with the said party of the second part—

*Firstly,*—That there shall be paid quarterly, during the said term, towards the maintenance and training of the said party of the second part, as such pupil teacher, the sum of , in accordance with the provisions of the law in existence for the time being relative to pupil teachers.

*Secondly,*—That all needful training shall be furnished the said party of the second part, during the term aforesaid, at the ordinary rate of charges for tuition in the said .

And the said parties of the second and third parts hereby jointly and severally covenant with the said Superintendent of Schools aforesaid, and his successors in office, that in case of a breach in this contract by the said party of the second part in any matter or thing whatsoever, or in case of the said party of the second part not conforming to the rules made for the government and training of such teachers, or being dismissed for misconduct by the Board of Examiners, to pay to the said , as Superintendent, or his successors in office, the sum of $200, or such proportion thereof as the unexpired period of service bears

to the whole period of service as liquidated damages and not as penalty, as if the said sum were assigned as liquidated damages for the specific breach of any separate provision herein contained.

In witness whereof the said parties have hereunto subscribed and set their hands and seals, at St. John's aforesaid, the day and year first above written.

Signed, sealed, and delivered, in presence of } [L.S.]

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## SCHEDULE J.

Annual Premiums required to be paid by each male teacher, according to age, as provided for in sub-section 1 of section 64 of this chapter, in order to secure to himself, upon his reaching the age of sixty years, a pension of $100 per annum during the remainder of his life, expectation of life, at that age, being taken at 12.5 years, and premiums being calculated on the scale of three and six per cent. compound interest.

| Age. | No. of Payments. | Annual Premiums on the scale of three per cent. compound interest. | Annual Premiums on the scale of six per cent. compound interest. | Age. |
|---|---|---|---|---|
| 16 | 44 | $11 56 | $4 29 | 16 |
| 17 | 43 | 12 04 | 4 57 | 17 |
| 18 | 42 | 12 68 | 4 87 | 18 |
| 19 | 41 | 13 09 | 5 19 | 19 |
| 20 | 40 | 13 66 | 5 54 | 20 |
| 21 | 39 | 14 25 | 5 91 | 21 |
| 22 | 38 | 14 90 | 6 31 | 22 |
| 23 | 37 | 15 56 | 6 73 | 23 |
| 24 | 36 | 15 28 | 7 19 | 24 |
| 25 | 35 | 17 03 | 7 69 | 25 |
| 26 | 34 | 17 84 | 8 22 | 26 |
| 27 | 33 | 18 52 | 8 80 | 27 |
| 28 | 32 | 19 61 | 9 43 | 28 |
| 29 | 31 | 20 60 | 10 10 | 29 |
| 30 | 30 | 21 65 | 10 84 | 30 |
| 31 | 29 | 22 78 | 11 63 | 31 |
| 32 | 28 | 23 97 | 12 50 | 32 |
| 33 | 27 | 25 30 | 13 43 | 33 |
| 34 | 26 | 26 72 | 14 47 | 34 |
| 35 | 25 | 28 25 | 15 60 | 35 |
| 36 | 24 | 29 92 | 16 85 | 36 |
| 37 | 23 | 31 74 | 18 21 | 37 |
| 38 | 22 | 33 73 | 19 72 | 38 |
| 39 | 21 | 35 92 | 21 40 | 39 |
| 40 | 20 | 38 33 | 23 31 | 40 |
| 41 | 19 | 41 08 | 25 41 | 41 |
| 42 | 18 | 44 00 | 27 75 | 42 |
| 43 | 17 | 47 79 | 30 39 | 43 |
| 44 | 16 | 51 10 | 33 39 | 44 |
| 45 | 15 | 55 38 | 36 82 | 45 |
| 46 | 14 | 60 28 | 40 77 | 46 |
| 47 | 13 | 65 95 | 45 37 | 47 |
| 48 | 12 | 72 58 | 50 77 | 48 |
| 49 | 11 | 80 42 | 57 23 | 49 |
| 50 | 10 | 89 93 | 64 92 | 50 |

## SCHEDULE K.

Annual Premiums required to be paid by each female teacher, according to age, as provided for in sub-section 1 of section 64 of this chapter, in order to secure to herself, upon her reaching the age of sixty years, a pension of $80 per annum during the remainder of her life, expectation of life, at that age, being taken at 13.5 years, and premiums being calculated on the scale of three and six per cent. compound interest.

| Age. | No. of Payments. | Annual Premiums on the scale of three per cent. compound interest. | Annual Premiums on the scale of six per cent. compound interest. | Age. |
|---|---|---|---|---|
| 16 | 44 | $ 9 85 | $ 3 61 | 16 |
| 17 | 43 | 10 26 | 3 84 | 17 |
| 18 | 42 | 10 69 | 4 10 | 18 |
| 19 | 41 | 11 13 | 4 37 | 19 |
| 20 | 40 | 11 63 | 4 66 | 20 |
| 21 | 39 | 12 14 | 4 98 | 21 |
| 22 | 38 | 12 68 | 5 31 | 22 |
| 23 | 37 | 13 25 | 5 67 | 23 |
| 24 | 36 | 13 86 | 6 06 | 24 |
| 25 | 35 | 14 50 | 6 48 | 25 |
| 26 | 34 | 15 18 | 6 93 | 26 |
| 27 | 33 | 15 92 | 7 41 | 27 |
| 28 | 32 | 16 70 | 7 94 | 28 |
| 29 | 31 | 17 54 | 8 51 | 29 |
| 30 | 30 | 18 43 | 9 13 | 30 |
| 31 | 29 | 19 39 | 9 80 | 31 |
| 32 | 28 | 20 42 | 10 73 | 32 |
| 33 | 27 | 21 54 | 11 32 | 33 |
| 34 | 26 | 22 74 | 12 19 | 34 |
| 35 | 25 | 24 05 | 13 14 | 35 |
| 36 | 24 | 25 47 | 14 19 | 36 |
| 37 | 23 | 27 02 | 15 34 | 37 |
| 38 | 22 | 28 71 | 16 61 | 38 |
| 39 | 21 | 30 57 | 18 02 | 39 |
| 40 | 20 | 32 63 | 19 64 | 40 |
| 41 | 19 | 34 90 | 21 40 | 41 |
| 42 | 18 | 37 45 | 23 37 | 42 |
| 43 | 17 | 40 29 | 25 59 | 43 |
| 44 | 16 | 43 49 | 28 12 | 44 |
| 45 | 15 | 47 14 | 31 02 | 45 |
| 46 | 14 | 51 30 | 34 34 | 46 |
| 47 | 13 | 56 13 | 38 21 | 47 |
| 48 | 12 | 61 79 | 42 76 | 48 |
| 49 | 11 | 68 45 | 48 15 | 49 |
| 50 | 10 | 76 51 | 54 68 | 50 |

# CHAPTER 26.

## Of Corporations the Interest upon whose Stock is guaranteed by the Government.


SECTION
1.—Governor in Council may supersede the directorate of certain incorporated companies in certain cases.
2.—Powers of shareholders to choose directors shall cease.
SECTION
3.—Governor may appoint persons in place of directors superseded.
4.—Publication.


**1.** In case any company, incorporated by any act of the Legislature, whereby the payment of the capital stock and interest thereon is guaranteed by the Government, shall be in default of payment of either the capital stock or interest, or when the company shall fail to fulfil its duties and obligations, it shall be lawful for the Governor in Council at any time he may deem it expedient, after such default or failure, to supersede the appointment of any director or directors appointed by the Governor, and to annul and cancel the office of director or directors chosen by the shareholders of any such company, and thenceforth to assume the direction and management, and to direct and manage the affairs and business, of such company, and to assume, possess and exercise all and singular, the powers and functions of the said directors appointed and chosen as aforesaid, as well for the imposition and collection of rates and assessments and all matters incidental thereto as for all other purposes, as fully as the same were exercised by the said directors under any act of incorporation as aforesaid, and to impose and collect any such further rates and assessments as may be necessary for the purposes of this chapter.

**2.** In the event of the Governor in Council, in pursuance of the power vested in him by the next preceding section of this chapter, superseding and annulling the appointments and offices of the director or directors as aforesaid, the power vested in the shareholders of such company by any act of the Legislature to choose directors shall thenceforth cease and determine.

**3.** It shall be lawful for the Governor in Council at any time to nominate and appoint a person or persons in the place of the director or directors whose appointment or office has been cancelled or superseded as aforesaid. The person or persons, who may be appointed in pursuance of this section, shall have and exercise all the power and authority which, by any act of the Legislature, have been or may be vested in the said directors, whether appointed by the Governor or chosen by the shareholders.

**4.** Appointments made and all matters done in pursuance of this chapter shall be published in the *Royal Gazette*.

# CHAPTER 27.

## Of the Census.


SECTION
1.—Governor to sub divide districts and appoint persons to take census.
2.—Duties of persons appointed.
3.—Magistrate in each district to revise returns.
4.—Copy of schedule to be furnished to resident senior clergyman of each denomination.
5.—Certified returns to be filed in Colonial Secretary's Office.
6.—Penalty for false returns.
7.—When census to be taken.
8.—Expenses to be paid by warrant.


**1.** For the purposes of this chapter the Governor in Council shall subdivide this colony and its dependencies into so many divisions as may be deemed expedient, and appoint persons to take the census and other statistical information by this chapter required within the said divisions; and every person so appointed shall discharge the duties required of him in such division to which he shall be appointed, as may be prescribed by the Governor in Council, and shall, before entering on the duties of his office, be sworn before one of Her Majesty's Justices to the faithful discharge of the same, and shall, while engaged therein, conform in all respects to all orders and directions of the Governor in Council made in conformity with the provisions of this chapter.

**2** Every person appointed shall make a return, with respect to the division or place to which he may have been appointed, of the information particularized in the schedule to and by this chapter, and such return shall be compiled within such periods as are hereinafter provided; and for the purpose of such compilation and return, every person so appointed shall, within his division, visit every house and enter in and upon any lands, tenements, or otherwise as he shall judge expedient for the execution of this chapter, and ask all such questions of the persons within the division for which he may be appointed, respecting themselves, the number and the quality of the persons constituting their respective families, and all other matters required to be stated concerning them in the said answers and returns; and every adult person refusing to answer any such questions, shall for such refusal or for making a false answer forfeit a sum not exceeding eight dollars, to be recovered with costs in a summary manner before any one of Her Majesty's Justices within the district in which the offence shall be committed; and in default of payment, such Justice shall commit the offender to gaol for any period not exceeding two days.

**3.** The Governor may appoint one or more stipendiary or honorary Magistrates in each of the several divisions aforesaid to examine and review the returns of the persons so to be appointed; and in any portion of this colony or its dependencies, where there is no resident Magistrate, may appoint some other person for that purpose; and persons shall on such

examination and review answer upon oath all such questions as may be put to them by the Magistrate or other person; and if, upon such examination and review, it shall appear to the said Magistrate or other person, that any such returns are imperfect, defective or erroneous, the examining Magistrate or other person may examine witnesses, and direct the person presenting the same to amend such defect, error or imperfection, previous to such returns being certified as hereinafter mentioned.

**4.** Every person appointed to take the census in any division of the respective places of the colony and its dependencies shall, at least ten days preceding the day on which such examination and revision shall be holden, furnish to the senior clergyman or minister of each religious denomination who shall reside within such division a copy of the schedule, as filled up by him, for such division, and also a notice of the time and place of holding such examination and revision: Provided that in any division or place where there shall not be any resident clergyman or minister, a copy of the schedule so filled up shall be furnished at least ten days preceding the day on which such examination and revision shall be holden to such person as shall be appointed by the bishop or principal of such religious denomination to receive the same.

**5.** On being satisfied of the correctness of any such returns as aforesaid, the examining Magistrate or other person appointed shall certify under his hand that such return is, to the best of his knowledge and belief, correct; and such certificate shall, together with the said return, be filed in the office of the Colonial Secretary by the person who shall have compiled such return, by a day in that behalf to be appointed by the Governor in such directions as aforesaid; and such returns shall be reduced into order under the direction of the Colonial Secretary, or by some officer in his department, and an abstract thereof shall be laid before the Legislature at its next session.

**6.** If any person so appointed shall wilfuly compile or make a return false in any of the particulars required, such person shall forfeit a sum not exceeding two hundred dollars, to be recovered in any Court of record; and in default of payment shall be subject to imprisonment for any period not exceeding six months, and shall further forfeit all compensation for his service.

**7.** The general census and returns under this chapter shall be taken and made between the months of June and December in the year one thousand nine hundred and one, and in at least every tenth year thereafter, and oftener if a previous appropriation be made for such purpose by the Legislature, and the taking of every census shall so far as practicable be simultaneous. The tables to be issued by the Governor in Council shall be in the forms contained in the schedule of questions annexed hereto, with such alterations and additions as the Governor in Council shall deem expedient.

**8**. The remuneration to the several persons to be appointed, and the expenses incurred for other purposes in carrying into effect the provisions of this chapter, shall be payable by warrant on the Receiver General.

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## SCHEDULE OF QUESTIONS.

*Buildings.*

1. How many inhabited houses
2. By how many families inhabited
3. Houses now building.
4. Uninhabited houses.
5. Stores, barns and outhouses.
6. Fishing rooms in actual use.

} and where situate.

*Inhabitants of various ages.*

7. Number of males under 6 years of age.
8. " females under 6.
9. " males from 6 to 16.
10. " females from 6 to 16.
11. " males from 16 to 21
12. " females from 16 to 21.
13. " males from 21 to 30.
14. " females from 21 to 30.
15. " males from 30 to 40.
16. " females from 30 to 40.
17. " males from 40 to 50.
18. " females from 40 to 50.
19. " males above 50 to 70.
20. " females from 50 to 70.
21. " males and females from 70 upwards.

} names, and where born.

*Married.*

22. Number of married persons.

*Widowers.*

23. Number of widowers.

*Widows, &c.*

24. Number of widows and orphans.

*Paupers.*

25. Number of cripples, aged and disabled paupers.

*Deaf and Dumb.*

26. Number of males, deaf and dumb.
27. Number of females, deaf and dumb.

*Blind.*

28. Number of males blind.
29. Number of females blind.

*Lunatics.*

30. Number of male lunatics.
31. Number of female lunatics.

*Idiots.*

32. Number of male idiots.
33. Number of female idiots.

*Indians.*

34. Number of male Indians, including children.
35. Number of female Indians, including children

*Coloured Persons*

36. Number of coloured males, including children.
37. Number of coloured females, including children.

*Births, Deaths and Marriages.*

38. Number of births the preceding year
39. " deaths the preceding year.
40. " marriages the preceding year.

*Number engaged in various professions.*

41. Number of clergymen or ministers.
42. " doctors and lawyers.
43. " farmers.
44. " mechanics.
45. " merchants and traders.
46. Number of persons engaged in catching and curing fish.
47. " persons engaged in lumbering.

*Churches and Schools and Pupils.*

48. Number of churches and places of worship of each denomination.
49. " schools in each district.
50. " children attending school.

*Number of various Religious Denominations.*

51. Number of Church of England.
52. " Roman Catholics.

53. Number of Kirk of Scotland.
54. " Free Church.
55. " Baptists.
56. " Wesleyan Methodists
57. " Congregationalists.
58. " other denominations.

*Improved Lands.*

59. Number of acres of cultivated land and average value.
60. " acres of other improved lands.

*Agricultural Products.*

61. Number of tons of hay cut.
62. " bushels of wheat raised.
63. " bushels of barley raised.
64. " bushels of rye raised.
65. " bushels of oats raised.
66 " barrels of potatoes raised.
67. " barrels of turnips raised.
68 " barrels of other root crops.
69. Quantity of timothy and clover seed raised.

*Agricultural Stock.*

70. Number of neat cattle.
71. " milch cows.
72. " horses.
73. " sheep.
74. " swine and goats.

*Fisheries.*

75. Number of vessels engaged in the seal or other fisheries, and men on board.
76. Amount of tonnage engaged in the fisheries.
77. Number of large boats engaged in fisheries, and men on board; from 4 to 15 quintals; 15 to 30; 30 and upwards.
78. Number of nets and seines.
79. Quantity of codfish cured
80. " salmon caught and cured.
81. " mackerel caught and cured.
82. " herring cured
83. Quantity and value of other fish cured, distinguishing each kind.
84. " " fish and oil, distinguishing each kind.
85 Quantity of seals.
86. Number of seal nets.
87. " cod seines.
88. " herring nets and seines.
89. " caplin seines.

*Mills and Factories.*

90. Number and value of saw mills, and number of hands employed.
91. " grist mills, and number of hands employed.
92. " tanneries, and number of hands employed.
93. " foundries, and number of hands employed.
94. " weaving and carding establishments, and number of hands employed.
95. " breweries and distilleries, and number of hands employed.
96. " hand looms.
97. " factories other than the above, and number of hands employed.

*Articles Manufactured.*

98. Number of yards of fulled cloth manufactured last year.
99. " yards of cloth not fulled.
100. " yards of flannel.
101. Value of boots and shoes manufactured.
102. " leather manufactured.
103. " candles manufactured.
104. " soap manufactured.
105. " agricultural implements manufactured.
106. " chairs and cabinet wares manufactured.
107. " carriages manufactured.
108 " wooden ware other than the above, manufactured.
109. " iron castings manufactured.
110. Quantity of coals and other minerals raised, specifying each kind.
111. " iron smelted, and value.
112. Number of gallons of malt liquor manufactured.
113. " gallons of distilled liquor manufactured.
114. Bushels of lime burnt, and value.
115. Quantity of bricks manufactured, and value.
116. Tons and value of gypsum quarried.
117. Quantity of butter manufactured.
118. " cheese manufactured.
119. Number of vessels built, and tonnage.
120. " boats built.
121. " and value of slates quarried and manufactured.
122. Value of imports into and exports from Newfoundland.
123. Value of imports into and exports from Labrador.
124. Number of vessels and tonnage owned in this colony.
125. Number of able-bodied fishermen and seamen in this colony and its dependencies.

# CHAPTER 28.

## Of the Registration of Births, Mariages and Deaths.


SECTION

1.—All births, marriages and deaths to be registered.
2.—Registrar General, in St. John's.
3.—Clergymen to keep registers.
4.—Notice of all births, &c., to be given to Registering Officers.
5.—All clergymen in charge of missions, &c., to be Registering Officers.
6.—Quarterly returns to be sent to Registrar General.
7.—Registrar General to keep full alphabetical registry.
8.—Information of births.
9.—Certificate of registry of birth.
10.—Illegitimate children.
11.—Information of marriages.
12.—Information of deaths.
13.—Certificate of death by medical attendant, &c.
14.—Sextons, &c., not to bury without certificate of death.
15.—Officials in charge of public institutions to report all births, marriages and deaths.
16.—Duties of Registrar General; notice.
17.—Fees for extracts from registers.
18.—Penalty for false statement.
19.—Penalty for publication in newspaper of false statement.
20.—Penalty on proprietor, &c., of newspaper.
21.—Recovery of penalties.
22.—Reference to registers; fees.
23.—Certificates from registry.


**1**. All births, marriages and deaths that take place within this Colony shall be registered in a public registry to be kept in the town of St. John's, and information as to such births marriages and deaths shall be furnished and obtained as hereinafter provided, and such registry shall be kept in a place of safety, to be approved of by the Governor in Council.

**2**. There shall be a chief officer appointed to carry out the provisions of this chapter, to be called the Registrar General, who shall have charge of the public registry in St. John's.

**3** Every Clergyman and other person baptizing, or celebrating marriage, or performing funeral services in this Colony, shall keep a true and accurate register of all persons whom he has baptized, married or buried; such register of baptism to state the day of the birth of the person baptized, and he shall transmit, quarterly, a correct copy of the same to the Registrar General.

**4**. Notice of all births, marriages and deaths that take place in this Colony shall be given within such times as are hereinafter provided, to one of the registering officers appointed under this chapter.

**5**. All clergymen and other persons legally licensed to baptize, celebrate marriage, or perform funeral service in this Colony (and having charge of any mission, parish or congregation) shall be "Registering Officers," and the limits of their duties under this chapter shall be the same as those assigned them by ecclesiastical authority.

**6.** The registering officers under this chapter shall forward, quarterly, to the Registrar General, a true copy of the registers kept by them of all births, marriages and deaths, of which they have received notice as aforesaid from the date of their last report to the Registrar General; such report shall be accompanied with a remittance of one-half of all fines imposed under this chapter collected by them, and such reports shall specify such other information respecting the births, marriages and deaths aforesaid, as is required by this chapter.

**7.** The Registrar General shall collect and keep a full and correct alphabetical registry of all births, marriages and deaths that take place within the Colony; shall file and keep copies of the registers received by him, and shall furnish to the Legislature an annual report of all matters and things relating to the affairs of his office, together with an account of the fees and fines collected under this chapter.

**8.** When any birth takes place in this Colony information of the same shall be furnished within fourteen days thereafter to the proper officer appointed under this chapter to receive the same, under a fine not exceeding ten dollars for every neglect to do so The obligation to furnish this information shall rest, in the first instance, upon the father of the child; or, in case of his death or absence, upon the mother; or, in case of the inability of both parents, then successively upon any person standing in their place, the nurse in attendance, or the occupier of the house within which the birth occurs.

**9.** Either of the parents, or the guardian, or other person who may have procured the registry of the birth of a child, shall be entitled to receive from the registering officer a certificate of such registry upon payment of a fee of fifty cents.

**10** In the case of the birth of an illegitimate child, it shall not be lawful to register any person as the father of such child, unless at the joint request of the mother and of the person acknowledging himself to be the father; but such birth shall be registered in accordance with the provisions of section eight, so far as the same shall apply.

**11.** When any marriage takes place in this Colony information of the same shall be furnished within ten days thereafter to a registering officer under this chapter under a penalty not exceeding fifty dollars for every neglect to do so. The obligation to furnish this information shall rest jointly and severally upon the husband and wife.

**12.** When any death takes place in this Colony information of the same shall be furnished or posted within ten days thereafter to the proper officer appointed under this chapter to receive the same, in the form in schedule A, under a fine not exceeding ten dollars for every neglect to do

so. The obligation to furnish this information shall rest, in the first instance, on the medical attendant, secondly, on the undertaker, and, failing these, on the next-of-kin to the deceased person.

**13**. On receiving information of such death, the registering officer under this chapter may fill up and cause to be signed by the medical attendant or undertaker, or, failing these, by some other credible person who witnessed the death, or identified the body after death, a written statement setting forth the date and place of death, the name, age and sex of the deceased, and the cause of death, as nearly as can be ascertained, and shall, if requested, issue to the person entitled to receive the same a certificate setting forth the facts thus subscribed to, as furnished to him, for which certificate a fee of fifty cents shall be charged

**14**. No sexton or other person, having charge of a cemetery or burial place, shall permit the burial of any person in such cemetery or burial place without first having received a certificate signed by a medical attendant, a clergyman, or two reliable persons cognizant of the facts, certifying to the death of the person for whom burial is required, and setting forth so far as is known the cause of death; and all such certificates shall be forwarded monthly to the registering officers concerned.

**15**. Officials in charge of hospitals, poor asylums, orphanages, gaols, and other such public institutions, shall send notice of any birth, marriage or death that occurs within the institutions under their charge within ten days thereafter, and, in default of doing so, such official shall be liable to a penalty of fifty dollars in each case

**16**. The Registrar General, or other registering officer, shall use every available means to obtain a full and accurate account of all births, marriages and deaths that take place in the Colony, and shall furnish a notice in the form of schedule B in all cases where he has reason to believe that the necessary information has not been supplied to him.

**17**. All persons named in the fifth section of this chapter, who shall forward to the Registrar General extracts from the registers kept by them of births, marriages and deaths occurring in their locality, shall be entitled to be paid for such notice at the rate of ten dollars per hundred events registered.

**18**. Every person who shall make, or cause to be made, for the purpose of being inserted in any register of births, marriages or deaths any false statement touching any of the particulars herein required to be known and registered, or who shall alter or deface any return or register, shall be subject to the same pains and penalties as if such person were guilty of wilful and corrupt perjury.

**19**. Every person who shall send to any newspaper, publisher or other person, for publication in any newspaper in this Colony, a fictitious or false statement of the marriage or death of any person, or the birth of any child, shall be guilty of a misdemeanor, and shall be liable to fine or imprisonment, or both, at the discretion of the Supreme Court.

**20**. Every proprietor, editor or publisher of any newspaper published in this Colony, who shall knowingly and wilfully publish a fictitious or false statement of the marriage or death of any person, or of the birth of any child, shall be guilty of a misdemeanor, and shall be liable to fine or imprisonment, or both, at the discretion of the Supreme Court.

**21**. All fines imposed under this chapter, unless herein otherwise provided, shall be recovered in a summary manner before any stipendiary Magistrate in the name of the Registrar General; one-half of such fine shall be retained by the Registering officer prosecuting, and the remainder shall be paid to the Registrar General, and shall be paid over by him to the Receiver General for the use of the Colony.

**22**. Reference may be had to the registers by any person, during office hours, by paying a fee of ten cents, under such regulations as the Registrar General shall appoint; and a certified extract from any registry may be obtained from him on application by paying a fee of fifty cents in each case: Provided that all clergymen, doctors, solicitors, members of the Legislature and public officers shall have free access to the registers during office hours free of charge.

**23**. Certificates of births, marriages and deaths shall be exact copies of the registers, and shall be signed and certified by the registering officers.

## SCHEDULE A.

No. COLONY OF NEWFOUNDLAND.

*Electoral District of* ,

(*a*) 18 .

Notice is hereby given that the death took place at (*b*), on the (*c*) day of , 18 , of (*d*), aged years, [married or single] as far as could be ascertained.

(*e*)

(*f*)

Witness,—

(*a.*) Name of place, day of month and year.
(*b.*) Name of place where death occurred.
(*c.*) Day of month and year when death occurred.
(*d.*) Name in full of deceased person.
(*e.*) Name of person giving this notice.
(*f.*) Address of person giving this notice.

## SCHEDULE B.

No. COLONY OF NEWFONNDLAND.

*Electoral District of* ,

(*a*) 18 .

SIR (OR MADAM),—

Hearing that a birth [marriage or death] has recently occurred in your house [or family], it is my duty to call your attention to the provisions of the Registration Act. An extract is hereto appended, in order that you may be prepared to conform to the requirements of the Act, and avoid the penalties for any breach of the same.

To , (*b*)

,
*Registering Officer for District.*

(*a.*) Name of place, day of month and year.
(*b.*) Name and address of person to whom notice is sent.

# CHAPTER 29.

## Of the Insurance of Bank Fishermen.


SECTION
1.—Master of schooners to pay at the Custom House fifty cents.
2.—Owner to pay in same manner twenty cents.
3.—Outport collectors to transmit to Receiver General.
4.—Monies to be deposited in Savings' Bank.
5.—$80 maximum amount to be paid to representatives of deceased fishermen.
6.—Fund not subject to attachment.
7.—When fund reaches $25,000, payment by master one half.
8.—Duty of masters.
9.—Must provide medicine chest.
10.—Fines—how disposed of.
11.—Meaning of terms.


**1.** The master of every schooner or vessel prosecuting the Bank fishery, out of any port in this colony, shall clear from the Custom House upon the first trip each season, and shall deposit with the Receiver General, Collector or Sub-Collector of Customs, at the port of clearance, the sum of fifty cents for each member of his crew, and such sum shall be a first charge upon the wages or share of each member of the crew.

**2.** The owner of each banking schooner or vessel prosecuting the said fishery shall, at the time and in the manner referred to in the foregoing section, deposit with the Receiver General, Collector or Sub-Collector of Customs at the port of clearance, the sum of twenty cents for each member of the crew of his schooner or vessel prosecuting the said fishery.

**3.** The amount deposited with outport collectors or sub-collectors of customs, under the provisions of the foregoing sections, shall be forthwith transmitted to the Receiver General.

**4.** All monies received by the Receiver General under the foregoing sections shall be deposited by him in the Savings' Bank to the credit of a fund known as the "Bank Fishermen's Insurance Fund," to be appropriated by him in the manner hereinafter provided.

**5.** If any member of the crew of a banking vessel, whose master and owner have complied with the provisions of this chapter, shall lose his life while engaged at the Bank fishery, or if by reason of being cast away or other accident while engaged at the Bank fishery as aforesaid, and within six months after the completion of the voyage he shall die, then and in any of such cases his legal representative, upon giving satisfactory proof of the cause of the death of the said member of the crew to the Receiver General, shall receive at the end of the current year a proportionate amount of the whole fund: Provided that the representative of no single person so lost shall receive more than eighty dollars in any case.

6. The interest of the legal representatives of any member of the crew mentioned in the preceding section in the "Bank Fishermen's Insurance Fund," shall not be subject to attachment or arrestment from any Court.

7. If the fund deposited in the Savings' Bank, as aforesaid, shall at any time reach the sum of twenty-five thousand dollars, then, and in such case, the payment by the master, as provided in the first section for each member of the crew, shall be one-half the amount hereinbefore provided for.

8. Every master of a banking schooner or vessel shall see that each dory, when on the Banks, before leaving his said schooner or vessel for any purpose whatever, has a compass, and a sufficient supply of food and water hermetically sealed for two men for at least four days, under a penalty of twenty-five dollars for each violation of the provisions of this section, to be recovered in a summary manner before a stipendiary Magistrate by any person who may sue for the same.

9. Every vessel employed in the Bank fishery of this colony shall, before proceeding on any such voyage, be provided with a medicine chest containing a sufficient supply of medicine, and the master of every such vessel shall, on clearing for a first voyage for the season, be compelled to produce to the Collector or Sub-Collector of Customs a certificate under the hand of some respectable medical practitioner or druggist, of such vessel being provided with a sufficient medicine chest, as aforesaid, or otherwise satisfy such collector or sub-collector of that fact.

10. All fines imposed under or by virtue of the provisions of this chapter shall go to the Receiver General to be placed to the credit of the "Bank Fishermen's Insurance Fund."

11. The term "Bank fishery" in this chapter shall be construed to mean a fishery prosecuted at a distance of at least forty miles from the coast of this colony; and the term "legal representative" shall mean, and be construed to be any person who shall have satisfied the Receiver General that he is entitled to receive the amount of such insurance, and it shall not be necessary that such person or persons shall have received letters of administration or probate out of the Supreme Court of this island to the will or estate of such person on whose account such amount of insurance is claimed, and the Receiver General, having paid the amount of such insurance, shall not be liable for any claims arising out of or on account of any amount of insurance so paid, anything in law or equity to the contrary notwithstanding.

# CHAPTER 30.

## Of Inquiries concerning Public Matters.


SECTION
1.—Governor in Council may require evidence upon oath.
2.—Commissioners to have power to compel attendance of witnesses; misdemeanor.


1. Whenever the Governor in Council deems it expedient to cause enquiry to be made into, and concerning any matter connected with the good government of this Colony, or the conduct of any part of the public business thereof, or the administration of justice therein, and such enquiry is not regulated by any special law, the Governor may, by the commission in the case, confer upon the commissioners or persons by whom such inquiry is to be conducted the power of summoning before them any party or witness, and of requiring them to give evidence on oath orally or in writing, (or on solemn affirmation), and to produce such documents and things as such commissioners deem requisite to the full investigation of the matters into which they are appointed to examine.

2. The Commissioner or Commissioners shall then have the same power to enforce the attendance of such witnesses and to compel them to give evidence as is vested in any court of law in civil cases; and any wilfully false statement, made by any such witness on oath or solemn affirmation, shall be a misdemeanor punishable in the same manner as wilful and corrupt perjury; but no such party or witness shall be compelled to answer any question, by his answer to which he might render himself liable to a criminal prosecution

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# CHAPTER 31.

## Of Promissory Oaths.


SECTION
1.—Form of Oath of Allegiance.
2.—Form of Official Oath.
3.—Form of Judicial Oath.
4.—Oath of Allegiance—by whom to be taken.
5.—Judicial Oath and Oath of Allegiance—by whom to be taken.
6.—Official Oath—by whom to be taken; proviso—not to apply where Special Oaths provided.
7.—Officer declining or neglecting to take oath disqualified, or to vacate office.
8.—Name of British Sovereign for time being to be substituted from time to time.
9.—Affirmation may be made in lieu of oath.


1. The oath in this chapter referred to as the Oath of Allegiance, shall be in the form following, that is to say:—

"I, , do swear that I will be faithful and bear true allegiance to Her Majesty Queen VICTORIA, Her Heirs and Successors, according to law; so help me GOD."

**2**. The oath in this chapter referred to as the Official Oath, shall be in the form following, that is to say :—

"I, , do swear that I will well and truly serve Her Majesty Queen VICTORIA, in the office of ; so help me GOD."

**3**. The oath in this chapter referred to as the Judicial Oath, shall be in the form following, that is to say :—

"I, , do swear that I will well and truly serve our Sovereign Lady Queen VICTORIA in the office of , and I will do right to all manner of people, after the laws and usages of this Colony, without fear or favor, affection or ill-will ; so help me GOD."

**4**. The Oath of Allegiance in the foregoing form shall hereafter be tendered to, and taken by, all persons who are by law required to take the Oath of Allegiance.

**5** The Judicial Oath and Oath of Allegiance shall be taken by the Chief Justice and Justices of the Supreme Court, Judges of District Courts, and by all stipendiary Magistrates, Justices of the Peace, or other persons appointed to any judicial office, as soon as may be after his acceptance of office ; and such oaths shall be tendered and taken in the manner in which the oath required to be taken by such officer, previously to the passing of this chapter, on entering his office would have been tendered and taken.

**6**. The oath of office shall be tendered to and taken by all persons who are now, or hereafter may be, required by law to take an oath of office ; provided that this section shall not extend to persons holding offices for which special oaths have been appointed under Acts of the Legislature.

**7** If any officer required by law to take any of the oaths hereinbefore mentioned, declines or neglects, when any oath required to be taken by him under this chapter is duly tendered, to take such oath, he shall, if he has already entered on his office, vacate the same ; and if he has not entered on the same, be disqualified from entering on the same ; but no person shall be compelled, in respect of the same appointment to the same office, to take such oath or make such affirmation more times than one.

**8** Where, in any oath under this chapter, the name of Her present Majesty is expressed, the name of the British Sovereign, for the time being, shall be substituted from time to time.

**9**. When an oath is required to be taken under this chapter, every person for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath, may, instead of taking such oath, make a solemn affirmation in the form of the oath hereby appointed, substituting the words "solemnly, sincerely and truly declare and affirm," for the words "swear," and omitting the words "so help me GOD,"

# TITLE III.

## OF RAILWAYS.

## CHAPTER 32.

## Of Railways and Railway Companies in this Colony.


SECTION

1.—Chapter to be of general application.
2.—Meaning of term "Company."
3.—Notices before railways are opened for conveyance of passengers.
4.—Penalty.
5.—Examination by Government Engineer.
6.—Penalty.
7.—Copy of Engineer's report to be furnished Railway Company.
8.—Governor in Council to order inspection at any time.
9.—Government may forbid running of trains when considered dangerous.
10.—Engineer to forthwith report.
11.—Engineer to have power to enter upon and examine railways.
12.—Rights and privileges of inspecting Engineers.
13.—Powers of Governor in Council or inspecting Engineer to regulate trains, &c.
14.—Railway Company to notify Government of accidents.
15.—Government Engineer to make special report of accident.
16.—Railway companies to make arrangements for interchange of traffic, &c.
17.—Railway Company to make bye-laws, &c.
18.—Railway Company may impose forfeitures upon their officers.
19.—Proof of notice of bye-laws, &c.
20.—Proof thereof as a defence for Company.
21.—Company not to impede navigation.
22.—Railway Company to have passenger trains properly equipped and provided.
23.—Penalty.
24.—Officers to be stationed at crossings.
25.—Locomotive to stop before crossing track of other railway.
26.—Speed of locomotive in passing through towns.
27.—Warning to parties when train moving reversely.
28.—Penalty for obstructing Engineer.
29.—Regulations in regard to passenger trains.
30.—Penalty for violation of regulations by servants of company where injury incurred.
31.—Penalty where no injury incurred.
32.—Penalty, how shared.
33.—Company may pay penalty and recover same from offender.


**1.** The provisions of this chapter shall apply to all railways which have been, or which may hereafter be constructed under the authority of any special act, passed by the Legislature of this colony, and to all companies which have been, or may hereafter be formed or incorporated for their construction and working.

**2.** In this chapter the term "company" means a company incorporated either before or after the passing of this chapter, for the purpose of constructing, maintaining, or working a railway in this colony, and includes any individual or individuals not incorporated, who are owners or lessees of a railway in the colony, or parties to an agreement for working a railway in the colony.

**3.** No railway, or portion of any railway, shall be opened for the public conveyance of passengers, until one month after notice in writing

of the intention to open the same has been given by the company to whom the railway belongs to the Governor in Council, and until ten days' after notice in writing has been given by the company to the Governor in Council, of the time when the railway or portion of railway will be, in the opinion of the company, sufficiently completed for the safe conveyance of passengers and ready for inspection.

**4.** If any railway, or portion of a railway, be opened without such notices, the company to whom such railway belongs shall forfeit to Her Majesty the sum of two hundred dollars for every day during which the same continues open, until the notices have been duly given and have expired.

**5.** The Governor in Council, upon receiving such notification, shall direct the Government Engineer, with or without other competent engineers, to examine the railway proposed to be opened, and all bridges, culverts, tunnels, road-crossings, and other works and appliances connected therewith, and also engines and other rolling stock, intended to be used thereon; and if the inspecting engineer or engineers report, in writing, to the Governor in Council, that in his or their opinion the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together with the ground of such opinion, the Governor in Council, and so from time to time, as often as such engineer or engineers, after further inspection thereof, so report, may order and direct the company to whom the railway belongs to postpone such opening, not exceeding one month at any one time, until it appears to the Governor in Council, that such opening may take place without danger to the public.

**6.** If any railway or any portion thereof be opened contrary to such order or direction of the Governor in Council, the company to whom the railway belongs shall forfeit to Her Majesty the sum of two hundred dollars for every day during which the same continues open, contrary to such order or direction.

**7.** No such order shall be binding upon any railway company unless therewith is delivered to the company a copy of the report of the inspecting engineer or engineers on which the order is founded.

**8.** The Governor in Council, whenever he receives information to the effect that any bridge, culvert, viaduct, tunnel, or any portion of any railway, or any engine, car or carriage, used or for any use on any railway, is dangerous to the public using the same from want of repair, insufficient or erroneous construction, or from any other cause, or whenever circumstances may arise which, in his opinion, render it expedient, may direct any engineer or engineers, as aforesaid, to examine and inspect the railway or any

portion thereof, or the works connected therewith, or the engines and other rolling stock in use thereon or any portion thereof, and upon the report of the engineer or engineers, may condemn the railway or any portion thereof, or any of the rolling stock or other appliances used thereon, and may require any change or alteration therein or in any part thereof, or the substitution of any new bridge, culvert, viaduct or tunnel, or of any material for the said railway, and thereupon the company to which such railways belong, or the company using, running or controlling the same shall, after notice thereof in writing, signed by the Governor in Council, proceed to make good, or remedy the defects in the said portions of the railway, or in the locomotive, car or carriage, which have been so condemned, or shall make such change, alteration or substitution hereinbefore referred to as has been required in manner aforesaid by the Governor in Council.

**9.** If in the opinion of any such engineer it is dangerous for trains or vehicles to pass over any railway or any portion thereof, until alterations, substitutions or repairs have been made thereon, or that any particular car, carriage or locomotive should be run or used, the said engineer may forthwith forbid the running of any train or vehicle over such railway or portion of railway, or the running or using of any such car, carriage or locomotive, by delivering, or causing to be delivered, to the president, managing director, or secretary, or superintendent of the company, owning, running or using such railway, or to any officer having the management or control of the running of trains on such railway, a notice in writing to that effect, with his reason therefor, in which he shall distinctly point out the defects or the nature of the danger to be apprehended.

**10.** The inspecting engineer shall forthwith report the same to the Governor in Council, who after full enquiry, may either confirm, modify, or disallow the act or order of the inspecting engineer, and such confirmation, modification or disallowance shall be duly notified to the railway company affected thereby.

**11.** Any engineer or engineers so appointed, as aforesaid, to inspect any railway or works, may, at all reasonable times, upon producing his or their authority, if required, enter upon and examine the said railway, and the stations, fences or gates, road-crossings, cattle guards, works and buildings, and the engines, cars and carriages belonging thereto.

**12.** Every railway company, and the officers and directors thereof, shall afford to the inspecting engineer or engineers such information as may be within their knowledge and power, in all matters inquired into by them, and shall submit to such inspecting engineer or engineers, all plans, specifications, drawings and documents relating to the construction, repair, or state of repair of such railway, or any portion thereof, whether a bridge, culvert or other part.

(1.) Any such inspecting engineer shall have the right, whilst engaged in the business of such inspection, to travel without charge, on any of the ordinary trains running on the railway and to use the telegraph wires and machinery in the offices of, or under the control of, any such railway company.

(2.) The operators or officers employed in the telegraph offices of or under the control of the company shall, without unnecessary delay, obey all orders of any such inspecting engineer for transmitting messages; and any such operator or officer refusing or neglecting so to do, shall forfeit for every such offence the sum of forty dollars.

(3.) The authority of any such inspecting engineer shall be sufficiently evidenced by instructions in writing, signed by the Colonial Secretary.

**13**. The Governor in Council, or the inspecting engineer or engineers, may limit the number of times or rate of speed of running of trains or vehicles upon any railway or portion of railway, until such alterations or repairs, as he or they may think sufficient have been made, or until such time as he or they think prudent; and the company owning, running or using such railway, shall comply forthwith with any such order of the Governor in Council or inspecting engineer, upon notice thereof, as aforesaid, and for every act of non-compliance therewith, every such railway company shall forfeit to Her Majesty the sum of two thousand dollars.

**14**. Every railway company shall, as soon as possible, and at least within forty-eight hours after the occurrence, upon the railway belonging to such company, of any accident attended with serious personal injury to any person using the same, or whereby any bridge, culvert, viaduct or tunnel on or of the railway has been broken, or so damaged as to be impassable or unfit for immediate use, give notice thereof to the Governor in Council, and if any company wilfully omits to give such notice, such company shall forfeit to Her Majesty the sum of two hundred dollars for every day during which the omission to give the same continues.

**15**. The Colonial Secretary may at any time direct the Government Engineer to make a special report with respect to any accident on the railway, which accident has caused loss of life or personal injury to any person, and in such case the Government Engineer shall have power to hold an investigation, of which investigation reasonable notice shall be given to the company, and to summon and examine such witnesses as he may consider necessary, under oath, and the Colonial Secretary shall cause such report to be made public at such time and in such manner as he thinks expedient.

**16**. The directors of any railway company may, at any time, make agreements or arrangements with any other company or owners of rail-

ways for the regulation and interchange of traffic passing to and from their railways, and for the working of the traffic over the said railways respectively, or for either of those objects separately, and for the division and apportionment of tolls, rates and charges in respect of such traffic, and generally in relation to the management and working of the railways, or any of them, or any part thereof, and of any railway or railways in connection therewith, for any term not exceeding twenty-one years, and to provide either by proxy or otherwise, for the appointment of a joint committee or committees for the better carrying into effect any such agreement or arrangement, with such powers and functions as may be considered necessary or expedient, subject to the consent of two-thirds of the stockholders voting in person or by proxy.

(1.) But every railway company shall, according to their respective powers, afford all reasonable facilities to any other railway company for the receiving and forwarding, and delivering of traffic, upon and from the several railways, belonging to or worked by such companies respectively, and for the return of carriages, trucks and other vehicles, and no company shall give or continue any preference or advantage to or in favour of any particular company, or any particular description of traffic, in any respect whatsoever, nor shall any company subject any particular company, or any particular description of traffic, to any prejudice or disadvantage in any respect whatsoever, and every railway company having or working a railway, which forms parts of a continuous line of railway or railway and steamer connection, or which intersects any other railway, or which has any terminus, station or wharf of the one near any terminus, station or wharf of the other, shall afford all reasonable facilities for receiving and forwarding by the one railway, all the traffic arriving by the other, without any unreasonable delay, and without any preference or advantage or prejudice or disadvantage, and, so that no obstruction may be offered in the using of such railway as a continuous line of communication, and so that all reasonable accommodation may at all times, by the means aforesaid be mutually afforded by, and to the said railway companies, and any agreement made between any two or more railway companies contrary to the foregoing provisions shall be unlawful, null and void.

(2.) Any railway company granting any facilities to any incorporated express company, shall grant equal facilities on equal terms and conditions, to any other incorporated express company demanding the same.

(3.) If any officer, servant or agent of any railway company, having the superintendence of the traffic at any station or depot thereof, refuses, or neglects to receive, convey or deliver at

any station or depot of the company for which they may be destined, any passenger, goods or things, brought, conveyed or delivered to him, or to such company for conveyance over or along their railway, from that of any other company, intersecting, or coming near to such first-mentioned railway, or in any way wilfully contravene the provisions of the second sub-section of this section, such first mentioned railway company, or such officer, servant or agents personally shall for each such neglect or refusal, incur a penalty not exceeding fifty dollars, over and above the actual damages sustained; which penalty may be recovered, with costs, in a summary way before any Justice of the Peace, by the railway company or any other party aggrieved by such neglect or refusal, and to and for the use and benefit of the company or other part so aggrieved.

(4.) For the purposes of the four next preceding sub-sections, the word "traffic" includes not only passengers and their baggage, goods, animals and things conveyed by railway, but also cars, trucks and vehicles of any description, adapted for running over any railway; the word "railway" includes all stations and depots of the railway and steamers connected therewith; and a railway shall be deemed to come near another when some part of the one is within one mile of some part of the other.

(5.) Whenever any railway company is permitted by the Act of Incorporation of such company, to amalgamate, by arrangement, with any other company, the contract for such amalgamation shall, when adopted and passed by such companies, be communicated to the Governor in Council, for approval, and such approval shall be announced by notice under the signature of the Colonial Secretary in the *Royal Gazette*.

(6.) In the event of two or more companies failing to make the traffic arrangements required by this chapter, such companies may be required by the Governor in Council, to make such arrangements within a specified reasonable time, and if the companies fail to agree as to the terms of such arrangements within the term so specified, then the Governor in Council shall have the power to adjust, decide and settle all desputes in relation thereto.

**17**. Every railway company shall make such bye-laws, rules and regulations to be observed by the conductors, engine drivers and other officers and servants of the company, and by all other companies and persons using the railway of such company, and such regulations with regard to the construction of the carriages and other vehicles to be used in the trains on the railway of the company, as are requisite for ensuring

the perfect carrying into effect of the provisions of this chapter, and the orders and regulations of the Governor in Council.

**18**. Any railway company may, by a bye-law, impose upon any officer, servant or person who, before the contravention of such bye-law has had notice thereof and is employed by the company, forfeiture to the company of not less than thirty days' pay of such officer or servant, for any contravention of such bye-law, and may retain any such forfeiture out of the salary or wages of the offender.

**19**. The notice of the bye-law, or of any order or notice of the Governor in Council, or of the inspecting engineer or engineers, may be proved, by proving the delivery of a copy thereof to the officer, servant or person, or that he signed a copy thereof, or that a copy thereof was posted in some place where his work or his duties, or some of them, were to be performed.

**20**. Such proof, with a proof of the contravention, shall be a full answer and defence for the company, in any suit for the recovery of the amount so retained, and such forfeiture shall be over and above any penalty under this chapter.

**21**. No such company shall cause any obstruction in or impede the free navigation of any river, stream or canal, to or across or along which their railway is carried.

**22**. Every railway company which runs trains upon the railway for the conveyance of passengers shall provide, and cause to be used, in and upon such trains, such known apparatus and arrangements as best afford good and sufficient means of immediate communication between the conductors and the engine-drivers of such trains, while the trains are in motion, and good and sufficient means of applying by the power of the steam-engine, or otherwise, at the will of the engine-driver or other person appointed to such duty, the brakes to the wheels of the locomotive or tender, or both, or of all or any of the cars or carriages composing the trains, and of disconnecting the locomotive, tender, and cars or carriages from each other by any such power or means, and also such apparatus and arrangements as best and most securely place and fix the seats or chairs in the cars or carriages, and shall alter such apparatus and arrangements, or supply new apparatus and arrangements, from time to time, as the Governor in Council may order.

**23**. Every railway company which fails to comply with any of the provisions contained in the next preceding section of this chapter shall forfeit to Her Majesty a sum not exceeding two hundred dollars for every day during which such default continues.

**24**. Every railway company shall station an officer at every point on their line crossed on a level by any other railway, and no train shall proceed over such crossing until signal has been made to the conductor thereof that the way is clear.

**25**. Every locomotive or railway engine, or train of cars, or any railway shall, before it crosses the track of any other railway on a level, be stopped for at least the space of one minute.

**26**. No locomotive or railway engine shall pass in or through any thickly peopled portion of any city, town or village, at a speed greater than six miles per hour, unless the track is properly fenced.

**27**. Whenever any train of cars is moving reversely in any city, town or village, the locomotive being in the rear, the company shall station on the last car in the train, a person, who shall warn parties standing on or crossing the track of, such railway, of the approach of such train, and for any contravention of the provisions of this and the three next preceding sections, the company shall incur a penalty of one hundred dollars.

**28**. Every person wilfully obstructing any inspecting engineer in the execution of his duty, shall, on conviction before a Justice of the Peace having jurisdiction in the place where the offence has been committed, forfeit and pay for every such offence any sum not exceeding forty dollars, and in default of payment of any penalty so adjudged, immediately or within such time as the said Justice of the Peace appoints, the same Justice or any other Justice having jurisdiction in the place where the offender resides, may commit the offender to prison for any period not exceeding three months; but such commitment shall be determined on payment of the amount of the penalty.

**29**. Every servant of the company employed in a passenger train or at a station for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, and he shall not, without such badge, be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office, or to interfere with any passenger or his baggage or property.

(1.) The trains shall be started and run at regular hours to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and goods as are within a reasonable time previous thereto offered for transportation at the place of starting, and at the junction of other railways, and at usual stopping places established for receiving and discharging way passengers and goods from the trains.

(2.) Such passengers and goods shall be taken transported, and discharged at, from, and to such places, on the due payment of toll, freight, or fare legally authorized therefor.

(3.) The party aggrieved by any neglect or refusal in the premises shall have an action therefor against the company; from which action the company shall not be relieved by any notice, condition or declaration, if the damage arises from any negligence or omission of the company or of its servants.

(4.) The baggage, freight, merchandize, or lumber cars shall not be placed in rear of the passenger cars, and if any such be so placed, the officer or agent directing or knowingly suffering such arrangement, and the conductor of the train, shall severally be guilty of a misdemeanor and be punished accordingly.

(5.) Every locomotive engine shall be furnished with a bell of at least thirty pounds weight, and with a steam whistle.

(6.) The bell shall be rung, or the whistle sounded at the distance of at least eighty rods from every place where the railway crosses any highway, and be kept ringing or be sounded at short intervals until the engine has crossed such highway, under a penalty of eight dollars for every neglect thereof, to be paid by the company, who shall also be liable for all damages sustained by any person by reason of such neglect, and one-half of such penalty and damages shall be chargeable to and collected by the company from the engineer having charge of such engine and neglecting to sound the whistle or ring the bell as aforesaid.

(7.) Any person in charge of a locomotive engine, or acting as the conductor of a car or train of cars, who is intoxicated, shall be guilty of a misdemeanor.

(8.) Any passenger refusing to produce his ticket, when so requested, or to pay his fare, may, by the conductor of the train, and the servants of the company, be put out of the train, with his baggage, at any usual stopping place, or near any dwelling-house, as the conductor elects, the conductor first stopping the train and using no unnecessary force.

(9.) Any person injured while on the platform of a car, or on any baggage, wood or freight car, in violation of the printed regulations posted up at the time in a conspicuous place inside of the passenger cars, then in the train, shall have no claim for the injury, provided room inside of such passenger cars, sufficient for the proper accommodation of the passengers, was furnished at the time.

(10.) No passenger shall be entitled to carry, or require the company to carry, upon their railway, aquafortis, oil of vitriol, gunpowder, nitro-glycerine, or any other goods, which in the judgment of the company, may be of a dangerous nature; and if any person sends, by the said railway, any such goods, without, at the time of so sending the said goods, distinctly marking their nature on the outside of the package containing the same, and otherwise giving notice in writing to the station-master or other servant of the company, with whom the same are left, he he shall forfeit to the company the sum of five hundred dollars, for every such offence.

(11.) The company may refuse to take any package or parcel which they suspect to contain goods of a dangerous nature, or may require the same to be opened to ascertain the fact.

**30**. If any officer or servant of, or person employed by any railway company, wilfully or negligently contravenes any bye-law or regulation of the company, lawfully made and in force, or any order or notice of the Governor in Council or of the inspecting engineer or engineers, of which a copy has been delivered to him, or has been posted up or open to his inspection, in some place where his work or his duties, or any of them, are to be performed, then if such contravention causes injury to any property, or to any person, or exposes any property or any person to the risk of injury, or renders such risk greater than it would have been without such contravention, although no actual injury occurs, such person convicted thereof, shall, in the discretion of the Court, before whom the conviction is had, be punished by fine not exceeding four hundred dollars, and in default of payment of the fine, to be imprisoned for a term not to exceed two years.

**31**. If such contravention does not cause injury to any property or person, nor expose any person or property to the risk of injury, nor make such risk greater than it would have been, without such contravention, then the officer, servant or other person guilty thereof, shall thereby incur a penalty not exceeding the amount of thirty days' pay, nor less than fifteen days' pay of the offender, from the company, in the discretion of the Justice of the Peace, before whom the conviction is had; and such penalty shall be recoverable with costs, before any one Justice of the Peace, having jurisdiction where the offence has been committed, or where the offender is found, on the oath of one credible witness other than the informer.

**32**. One moiety of such penalty shall belong to Her Majesty for the public uses of the colony, and the other moiety to the informer, unless he be an officer or servant of, or person in the employ of the company, in which case, he shall be a competent witness, and the whole penalty shall belong to Her Majesty for the use aforesaid.

**33**. The company may, in all cases, under the the three next preceding sections, pay the amount of the penalty and costs and recover the same from the offender, or deduct it from his salary or pay.

# CHAPTER 33.

## Of the Operation of the Placentia Railway.


SECTION

1.—Governor in Council shall have power to operate line.
2.—Portions of chapter 32 to apply to operation of railway under this chapter.
3.—Supreme Court to settle disputes as to traffic arrangements.
4.—All working expenses to be paid out of earnings of line.
5.—Rates, &c., may be recovered in any Court.
6.—Goods may be seized and sold for non-payment of freight.
7.—One month's notice to be given to employees before action brought.
8.—Misdemeanor.
9.—Penalty.
10.—Penalty for permitting horse or other anima to enter upon the line of railway.
11.—Persons not allowed to walk on line.
12.—Penalties recovered in a summary manner.


**1.** The Governor in Council, by and through such commissioners, managers, superintendents, or other persons as may be necessary and appointed for the purpose, shall have power and authority to maintain work and operate the line of railway between the Harbor Grace Junction of the Newfoundland Railway Company's line and Placentia, constructed under the authority of the Act 50th Vic., cap. 7, and may, through the said commissioners, managers, superintendents, or other persons, their engineers, agents, workmen and servants—

(*a.*) Maintain all necessary and convenient buildings, stations, depots, wharves and fixtures, and, from time to time, alter, repair or enlarge the same, and purchase and acquire stationary or locomotive engines and carriages, waggons, floats and other machinery necessary for the accommodation and use of the passengers, freight or business of the railway;

(*b.*) Take, transport, carry and convey persons and goods on the railway, and construct, make and do all other matters and things necessary and convenient for using the railway;

(*c.*) Make, establish, fix, appoint, publish and declare, and, from time to time, alter, amend, repeal or add to all such rules, regulations, bye-laws, orders, directions, notices and provisions as may be deemed necessary in respect of or relating to the transportation and carriage of persons or goods on the railway; the time and manner in which the same shall be transported; the rates, tolls or charges to be paid therefor; the time for the arrival and departure of trains; the care, custody and disposition of luggage; the preservation of order and good conduct and comfort in the carriages, stations and depots of the line; the security and protection of life and property; and generally for the proper, efficient and convenient operation of the line and management of the tariff thereof;

(*d.*) Make, enter into and carry out any contract, agreement or arrangement with any company or person for the hire or use of engines, cars, machinery or other equipments for the line, or, subject to the confirmation of the Legislature at its then present or next session, for the hiring, letting or assigning to such company or person, the line and its stock and equipments, to be worked and operated by such company or person, and upon such terms and conditions as to the collection, receipt and appropriation of the profits and earnings of the line, or the dividing or sharing thereof, between such company or person and the Government, as may be deemed expedient.

**2.** The provisions of the following sections of chapter 32 of these Consolidated Statutes shall be held to apply to the railway to be operated under the provisions of this chapter, and the operation thereof, unless otherwise provided herein, and the commissioners, managers, superintendents or other persons appointed by the Governor in Council, shall have, exercise, and perform the same rights, powers and duties in respect of said railway as are provided by the said sections in respect of directors of any railway company; section sixteen, and sub-sections of said section one, two, three, four, five; sections seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-nine, and the following sub-sections of section twenty-nine: one, two, five, six, seven, eight, nine, ten and eleven; sections thirty, thirty-one, thirty-two and thirty-three.

**3.** In the event of the Governor in Council and any railway company failing to make the traffic arrangements required by said section sixteen of the said chapter within a reasonable time, either party may apply by petition to the Supreme Court, which Court shall have power summarily to hear the parties touching the matters in dispute, and to take such evidence thereupon as may be necessary, and to adjust, decide, and settle all disputes between the parties, and to make such directions and orders as may be necessary for carrying its decisions into effect.

**4.** Out of the earnings and profits of the said line of railway the Governor in Council shall pay all working expenses of the line, including the wages of servants and employees, and all income and profits over and above the amount necessary to pay such working expenses, shall be paid over to the Receiver General for the use of the colony.

**5.** All rates, fares, tolls and charges, may be recovered with costs in any Court of competent jurisdiction by the conductor, superintendent or clerk appointed to receive the same in the name of Her Majesty.

**6.** Her Majesty shall have a lien on all goods transported over the railway for the freight and charges thereon, as well as for any balance previously due for freight or otherwise by the owner or consignee; and the

said goods shall be liable to be sold by public auction for the payment of charges thereon and other balances due, and if the owner or his agent does not, within ten days after the arrival of the goods at the place of destination, pay the freight and other charges due thereon or payable in respect thereof, and take possession of and remove such article from the railway premises, the commissioners, managers, superintendents, or other persons appointed by the Governor in Council, as aforesaid, may sell the same at public auction after giving ten days' public notice of such sale, to defray the railway claims and all expenses incurred in respect thereof, and the said goods shall be at the risk of the owner thereof from the time of their arrival at the place of destination.

**7**. No action shall be brought against any officer, employee or servant of the Government under this chapter, for anything done by virtue of his office, service or employment, unless within three months after the act is committed, and upon one month's previous notice thereof in writing.

**8**. Every officer, agent of the Government and every conductor of a train, who directs or knowingly permits any baggage, freight, merchandise or lumber-cars to be placed in rear of the passenger cars, is guilty of a misdemeanor, and shall be punishable accordingly.

**9** Every person who wilfully obstructs any officer or employee in the execution of his duty, shall, on summary conviction, be liable for every such offence to a penalty not exceeding forty dollars, and in default of payment to imprisonment for any term not exceeding three months.

**10**. Every person who rides, leads or drives any horse or any other animal, or permits any such horse or other animal to enter upon the railway, or where fences and guards have been constructed within the same, without the consent of an officer or employee of the Government, shall, for every such offence, incur a penalty not exceeding forty dollars, and shall also pay to the person aggrieved all damages sustained thereby: Provided always that no person shall be liable to the said penalty when he rides, leads or drives any horse or other animal over a farm or road crossing, unless he allows such horse or other animal to loiter unnecessarily or remain upon the railway or the appurtenances thereof.

**11**. Every person not authorized or employed by the Government, who walks along the track of the railway, except where the same is laid across or along a highway shall, for every such offence, incur a penalty not exceeding twenty dollars.

**12**. All penalties and forfeitures under this chapter may be sued for, imposed and recovered, in a summary manner, before a stipendiary Magistrate.

# CHAPTER 34.

## Of a Line of Railway towards Hall's Bay, and of a Branch to Brigus or Clarke's Beach.


SECTION
1.—Governor shall enter into a contract for the construction of a railway
2.—Rails, &c., free of duty.
3.—Contractors may take lands.
4.—Compensation to parties whose lands are taken.
5.—Arrangement with Newfoundland Railway Company.
6.—Receiver General shall raise on loan $4,500,000.
7.—Loan may be raised in sterling money.


**1.** The Governor in Council shall enter into a contract for the work of construction and equipment of a railway from a point on the line of railway between Placentia and Whitbourne to Hall's Bay, or such other point on the surveyed route thereto as may be decided upon by the Governor in Council, with the branch line to Clarke's Beach or Brigus. Such contract shall be made and entered into with some one of the parties whose tenders have been laid before the Legislature during the session of the year 1890, and shall be under such terms, covenants, conditions, provisoes and limitations as may be mutually agreed upon between such contractor and the Governor in Council.

**2.** All rails, fish-plates, fish-bolts and track-spikes required by the contractors for the purposes of the said line of railway and the said branch, shall be admitted into this colony free of duty.

**3.** The contractors, with the sanction of the Governor in Council, may enter upon, assume possession of and appropriate, for the purposes of the said railway, any lands that may be necessary for the opening or improvement of the said railway and the branches thereof, or for the erection of any buildings requisite for maintaining and operating the same, and may enter upon and remove therefrom any houses or buildings and other obstructions which may be upon such land.

**4.** For the purpose of ascertaining the damage that may be occasioned to any person whose interest in any lands or tenements may be in any way affected under the provisions of this chapter, the Governor shall appoint one person, the party interested shall appoint another, and the Surveyor General of the colony for the time being shall be a third, which three persons or any two of them shall determine the amount of compensation, if any, to be paid to such party according to his interest therein; and in case such party shall refuse or neglect to appoint an arbitrator within seven days after notice in writing so to do from the other two arbitrators, such two arbitrators shall name a third arbitrator, and the award of any two of them shall be final and binding; and the said arbitra-

tors shall be sworn before a stipendiary Magistrate to do justice between the parties, and may summon and require the attendance before them of all parties interested in the property to be appraised by them, the agents of such parties respectively, and also all necessary witnesses, and require the production of all deeds and papers requisite to establish the title or interest of any party claiming compensation in manner hereinbefore mentioned, and may examine upon oath, to be administered by any one of such arbitrators, all such parties or their agents and all such witnesses touching the matters to be enquired into by such arbitrators. If the said arbitrators shall be of opinion that the proprietors of land taken for the purposes aforesaid, or any of them, may be indemnified at a less expense by having an equal portion of land assigned to them from any land adjoining, and that such adjoining land may be taken without material injury to the proprietor thereof, the said arbitrators shall mark off and in like manner appraise so much of the said adjoining land as they may think sufficient to replace the land required as aforesaid, and the same so marked off shall belong to the first mentioned proprietors, and be in lieu of all indemnity, and the appraised value of the same shall be paid to the party from whom such land was so taken, and shall be a full satisfaction and release of the same and of all right and title thereto: Provided that if the land so to be given shall not be deemed an equivalent for the land so to be appropriated for the said purposes of the said railway and buildings as aforesaid, the said proprietor shall be paid such sum as may be, with the land so to be assigned, full satisfaction for the land so appropriated.

**5.** The Governor in Council shall have authority to make and carry into effect such agreement as may be deemed equitable with the proprietors of the Newfoundland railway for the completion and operation of the branch line of railway between Harbor Grace and Carbonear.

**6.** The Receiver General of the colony shall have power to raise by public advertisement and [or] on tender, a loan upon the credit of the colony, to be applied for the purposes of this chapter, not exceeding four millions five hundred thousand dollars, currency, on such terms, and at such times, as may be decided upon by the Governor in Council, which sum, with interest thereon at the rate of three and one-half per cent. per annum, shall be chargeable upon, and shall be repayable out of the funds of the colony at the times and in the manner prescribed by the schedule annexed.

**7.** The Receiver General, if he shall deem it desirable, shall raise such loan in sterling money in the United Kingdom of Great Britain and Ireland, and according to the provisions of the act passed in the 51st year of the reign of her present Majesty, entitled "An act relating to loans upon the credit of the colony."

SCHEDULE.

Know all men by these presents, that the Newfoundland Government is indebted to , or to the bearer hereof, in the sum of $ , current money of Newfoundland, which they promise to pay to the bearer hereof on the first day of January, 1941; the interest upon which, at the rate of three and one-half per centum per annum, the said Government promises to pay at its agency in , on the first day of January and first day of July in each year, on presentation of one of the coupons attached hereto.

This bond is one of a series of bonds issued and to be issued to an aggregate amount, not exceeding $ , consisting of $ each, numbered consecutively from one upwards.

In witness whereof His Excellency the Governor in Council has caused these presents to be signed by the Receiver General of the Colony and countersigned by the Colonial Secretary thereof, this day of , A. D. 189 .

# CHAPTER 35.

## Of the Purchase of the "Newfoundland Railway" by the Government.

SECTION
1.—Governor in Council shall have power to purchase the Newfoundland Railway.
2.—Receiver General shall have power to raise by loan a sum sufficient for said purchase.
SECTION
3.—Receiver General may raise loan in sterling money.
4.—Governor in Council may effect purchase by giving as payment debentures of Colony.

**1.** The Governor in Council shall have power to make, enter into and carry into effect, such arrangements as may be deemed equitable with the proprietors of the Newfoundland Railway for the purchase from the said proprietors of all railways, railway plant, lands, and all property of every description whatsoever, held and owned in this Colony by said proprietors of the Newfoundland Railway.

**2.** The Receiver General of the Colony shall have power to raise by public advertisement and [or] on tender, a loan, upon the credit of the Colony, to be applied for the purposes of this chapter, of a sum of money sufficient to purchase from the proprietors of the Newfoundland Railway, the railways, railway plant and lands and property owned in this Colony

by the said proprietors on such terms and at such times as may be decided upon by the Governor in Council, which sum, with interest thereon at the rate of three and one-half per cent. per annum, shall be chargeable upon and repayable out of the public funds of this Colony at the times and in the manner prescribed in the schedule annexed.

3. The Receiver General, if he shall deem it desirable, may raise such loan in sterling money in the United Kingdom of Great Britain and Ireland, and according to the provisions of the Act passed in the 51st year of the reign of Her present Majesty, entitled "An Act relating to Loans upon the credit of the Colony."

4. The Governor in Council may, if it seem to him desirable, effect the purchase of the said railways, railway plant, lands and property, by giving in payment therefor one or more debentures for the amount of the said purchase money to the said proprietors of the Newfoundland Railway, such debenture or debentures shall be in the form prescribed in the annexed schedule, shall be signed by the Receiver General and countersigned by the Colonial Secretary, and be transferable by endorsement thereof.

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## SCHEDULE.

Know all men by these presents, that the Newfoundland Government is indebted to , or to the bearer hereof, in the sum of $ , current money of Newfoundland, which they promise to pay to the bearer hereof on the first day of January, 1941; the interest upon which, at the rate of three and one-half per centum per annum, the said Government promises to pay at its agency in , on the first day of January and first day of July in each year, on presentation of one of the coupons attached hereto.

This bond is one of a series of bonds issued and to be issued to an aggregate amount not exceeding $ , consisting of $ each, numbered consecutively from one upwards.

In witness whereof His Excellency the Governor in Council has caused these presents to be signed by the Receiver General of the Colony and countersigned by the Colonial Secretary thereof, this day of , A. D. 189 .

# TITLE IV.

## OF MUNICIPAL AND LOCAL MATTERS.

## CHAPTER 36.

## Of Nuisances and Municipal Regulations.


SECTION

1.—Obstructing sidewalks, streets, lanes, gratings, etc., carting manures and slaughtering animals, declared to be offences.
2.—Throwing stones, ballast, etc., into harbors or roadsteads.
3.—Obstructing public coves.
4.—Police authority to inspect nuisances in private places.
5.—Magistrates' authority over dilapidated buildings.
6.—Gambling and lewd places declared nuisances.
7.—Penalty for keeping same.
8.—Title or lease made void thereby.
9.—Party knowingly letting or conniving guilty.
10.—Penalty for loose and disorderly persons.
11.—Indecent exhibitions, loitering, exposing person, lewd language; defacing signs, door-knockers, fences, yards; noise in street, nightwalkers, etc.
12.—Maintenance of sidewalks, etc., levelling snow, etc.
13.—Maintenance of pavements in good repair.
14.—Prevention of coasting, skating, stone-throwing or annoying games in streets, etc.; liability of parents for penalty.
15.—Playing games, etc., on Sunday.
16.—Dangerous building lots to be enclosed.
17.—Owner failing to enclose, Municipal Council or Board of Works may do so.

SECTION

18.—When owner absent, service of summons on agent or occupier sufficient.
19.—Dangerous chimneys or pipes, etc.; penalty.
20.—Using firearms within towns or settlements; penalty.
21.—Mummering a nuisance; penalty.
22.—Driving furiously or without guiding reins sleigh or slide without bells, negligent carriage of timber, etc.; penalty.
23.—Owner's name to be painted on cart.
24.—Rules of the road for vehicles.
25.—Goats without yokes, or pigs found wandering to be impounded.
26.—Penalties for being found drunk.
27.—Courts of Session, and prevention of nuisances and safeguarding of public health.
28.—Orders of Sessions same force as law.
29.—Exposure of stallions, bulls, rams and he-goats forbidden.
30.—Owners of animals at large liable for damage done by them.
31.—Castration of animals.
32.—Description of animal to be sent Chairman Board of Agriculture or Agricultural Society.
33.—Penalty under two last preceding sections.
34.—Procedure.
Schedule.


**1.** Any person who shall, in any city, town or settlement in this colony,—

(1.) Draw, drive or carry any truck, sleigh, wheel-barrow or other vehicle in or upon any way used or appointed to be used as a footwalk or sidewalk, except directly across such footwalk or sidewalk on necessary occasions, or lead, ride or drive on any such footwalk or sidewalk any beast, except directly across the same and on necessary occasions, or tie or fasten any horse or other beast, or suffer the same to stand on or across the said footwalk or sidewalk; or

(2.) Place or deposit on any sidewalk, except in transit, any boxes, barrels, packages or other matter or thing so as to obstruct free passage on the sidewalk; or

(3.) Place or leave any mortar, lime, sand, bricks, stone, timber, or other material for building, or sift or screen any lime in any of the public streets, lanes, squares or passages without the permission of the Magistrate (except for the purpose of building or repairing a house or other erection, for which any person shall have the right to occupy one-third of the street in front of such building during the progress of such work, provided that such place so occupied be enclosed with a sufficient fence); or

(4.) Cast or throw any drift, dung, rubbish or other offensive matter in or upon any gratings, or deposit or cause to be deposited before his dwelling house, store or other building, any dung, dirt, rubbish or any other offensive matter; or

(5.) Cast or throw or order to be cast or thrown into any of the public coves or streets, lanes, squares, rubbish, dead or dying cattle, or any putrid or offensive matter; or

(6.) Bring into or carry through the streets, lanes or passages, any putrid substances, manure, night-soil or other offensive matter whatsoever, unless the same be carried in a cart, puncheon or barrel, tight, close and covered; or

(7.) Kill, slaughter, scald or dress any animal for meat, except with the permission of a stipendiary Magistrate, shall be liable for every offence to pay a penalty not exceeding twenty-five dollars, or imprisonment for a period not exceeding thirty days.

**2.** Any person who shall throw any stones or ballast, or anything else hurtful or injurious, into any harbor or roadstead in this colony or its dependencies shall, for every offence, be liable to a penalty not exceeding fifty dollars, or to imprisonment for a period not exceeding fifty days.

**3.** Any person who shall encumber, make erections across or obstruct any of the public coves, or the waters thereof, shall be liable to a penalty not exceeding ten dollars, or to imprisonment for a period not exceeding ten days: Provided that this section shall not be held to affect the right of parties to have vessels or boats at wharves adjoining the public coves for the purpose of loading or discharging cargoes.

**4** Any stipendiary Magistrate may open and enter, or may direct the Inspector of Police or a constable to enter and inspect private places, where any noxious substance dangerous to the public health may be reasonably suspected to exist, and shall order all nuisances and filth to be removed therefrom or destroyed; and if the same shall not be removed or destroyed within twenty-four hours after such order, the person neglecting or refusing to obey such order shall be liable to a penalty not exceeding twenty dollars, or the Magistrate may, in his discretion, cause the same to be removed or destroyed, and may recover the expense of so doing, in a

summary manner, in the name of the clerk of the peace or constable inspecting from the person so offending.

**5.** A stipendiary Magistrate may, after due notice in writing to the proprietor of any burnt, dilapidated or dangerous building, or his agent, and a hearing of the matter, adjudge the same to be a nuisance in the neighbourhood, or dangerous, and shall make an order prescribing such disposition, alteration or regulation thereof, as the said Magistrate may deem necessary; and if the said proprietor shall fail to comply with such order, he shall be liable to a penalty not exceeding fifty dollars; or the Magistrate may, in his discretion, cause the said nuisance to be removed or destroyed, and may recover the expense of so doing in a summary manner in the name of the Clerk of the Peace or a constable from the person so offending.

**6.** All buildings, places or tenements resorted to for prostitution, lewdness or illegal gaming, shall be deemed common nuisances.

**7.** Whoever keeps or maintains such common nuisances shall be liable to a penalty not exceeding one hundred dollars, or to imprisonment in the nearest gaol for a period not exceeding three months.

**8.** If a tenant or occupant under lawful title of any building or tenement uses such premises, or any part thereof, for any of the purposes enumerated in the sixth section, such use shall annul or make void the lease or other title under which he holds, and, without any act of the proprietor, shall cause the right of possession to revert and vest in such proprietor, who may, without process of law, make immediate entry upon the premises, or he may avail himself of the remedy provided by law for the more speedy recovery of tenements.

**9.** Whoever knowingly lets a building or tenement, owned by him or under his control, to be used for any purpose mentioned in section six, or after due notice of any such use, omits to take all reasonable measures to eject therefrom the persons occupying the same as soon as it can be lawfully done, shall be deemed guilty of aiding in the maintenance of such nuisances, and punished by fine not exceeding one hundred dollars, or imprisonment for a period not exceeding three months.

**10.** Any stipendiary Magistrate may condemn all loose and disorderly persons convicted before him, on his own view, or by their own confession, or on the oath of one or more creditable witnesses, to pay immediately, or within such period of time as he thinks fit, a fine not exceeding twenty dollars.

**11.** Persons openly exposing or exhibiting in any street, road, public place or highway, any indecent exhibition, or openly and indecently exposing their persons; persons loitering in the streets or highways and obstructing

passengers, using any lewd or insulting language, or in any other way annoying passengers, tearing down or defacing signs, breaking doors or door-plates or knockers, or the walls of houses, yards or gardens, destroying fences, causing a disturbance or noise in the streets or highways by screaming or shouting; also all common prostitutes or nightwalkers, wandering in the fields, public streets or highways, not giving a satisfactory account of themselves, shall be deemed loose and disorderly persons within the meaning of this chapter and shall be subject to the penalty mentioned in the tenth section.

**12**. Any person, whether occupier or owner, who shall fail in keeping the causeways or sidewalks free of snow and ice, to the extent of the breadth of such sidewalks, and the surface drains adjoining the same, opposite to his land, dwelling house, stores or other buildings, or shall throw any snow or ice in any of the streets, lanes or passages without levelling the same, shall be liable to a penalty not exceeding ten dollars.

**13**. Any person who shall not keep in good condition and repair the stone, block or plank pavement or causeway opposite to his land, dwelling house, stores or other buildings, shall, for every offence, forfeit and pay a penalty not exceeding twenty-five dollars, and the chairman of the Municipal Council or chairman of the Road Board may cause to be repaired and amended the said pavement or causeway, and shall thereupon be entitled to recover from the owner or occupier of such land, dwelling house, store or other building, before any stipendiary Justice in a summary manner, the expenses incurred in such reparation and amendment, with costs of suit.

**14**. The stipendiary Magistrates and Justices in Quarter Sessions may make regulations for preventing persons from coasting, skating or sliding down the hills or highways or streets, throwing stones in the said streets, or playing any games in such highways or other places calculated to inconvenience or annoy, and may impose a penalty not exceeding five dollars for every breach of such regulations. The property of parents may be liable under distress for any penalty imposed on a minor, and the master of any apprentice paying any penalty herein, shall be entitled to recover from the apprentice, or deduct from his wages such penalty.

**15**. All persons violating the Sunday by playing any game to the annoyance of their neighbors or of the public, and all persons found conducting themselves in a disorderly manner, may be arrested by the police and taken before the said Magistrates, either or any of them, and by him or them tried in a summary manner, and if convicted shall be liable to a fine of not exceeding fifty dollars, or imprisonment for a period not exceeding ten days.

**16**. All building lots and improved and occupied lands fronting on any road, street, lane, or cove, within this colony, and dangerous to passengers, or in other respects a nuisance, shall be protected and enclosed

with a sufficient fence; and should any question arise as to the sufficiency of the fence required by this section or sub-section three of the first section, the order of a stipendiary Magistrate thereon shall be final and binding on the owner or occupier of the lands to be protected and enclosed by such fence.

**17**. If the owner or occupier of any building lots, improved or occupied lands, shall neglect, after receiving notice, to protect and enclose the same with such fence, the Chairman of the Municipal Council, or the Chairman of the Road Board in the district where such property is situated, may cause the same to be erected or repaired, and shall thereupon recover from such owner or occupier, before any Justice, in a summary manner, the expenses incurred in the erecting or repairing of such fence, together with costs of suit.

**18**. In any action the Chairman of the Municipal Council, or Chairman of the Road Board, shall bring for such expenses and costs against any such owner or occupier of such building lots, improved or occupied lands, who shall be absent from this colony, service of a copy of the writ or summons in such case upon the agent of the owner, or on the occupier of such building lots, improved or occupied lands, shall be deemed sufficient service for the purposes of this chapter.

**19**. On information being given to any Justice of any building wherein there is any dangerous chimney, stove-pipe or funnel, the said Justice shall direct a constable to proceed to the said building and examine the same; and if he shall report to the said Justice that any repairs, alteration or removal be necessary, the said Justice upon hearing the parties may make an order for such repairs, alteration or removal to be made; and if such order shall not be complied with, such Justice shall cause such removal or alteration to be made at the expense of the occupant or owner of the building. And if any person shall refuse admittance to such constable while acting under this section, or shall not make the removal or alteration so ordered, he shall for each offence forfeit and pay a penalty not exceeding twenty-five dollars, to be recovered together with the expenses of removal or alteration in the name of such constable, and in default of payment the offender may be imprisoned for a period not exceeding ten days.

**20**. Any person firing any gun, pistol, or fire-arm in any city, town or settlement in this island, for the purpose of creating a noise or disturbance, or without some necessary or reasonable excuse for so doing, shall, for every such offence, pay a penalty not exceeding twenty dollars.

**21**. Any person who shall be found at any season of the year in any city, town or settlement in this colony, dressed as a mummer, masked or otherwise disguised, shall be deemed a public nuisance, and may be arrested by any peace officer, without a warrant, and taken before any Justice

in the district or place where such person may be found, and on conviction in a summary manner before such Justice shall be liable to a fine not exceeding five dollars, or imprisonment for a period not exceeding seven days.

**22.** Any person who shall use, ride or drive any horse or other animal in a furious or improper manner in any of the streets, squares, lanes, or passages of any city, town or settlement in this island; or shall thereon drive or suffer to proceed, any cart, carriage, slide or sleigh, without some person leading or guiding with reins the horse attached thereunto, and if a sleigh or slide with less than two good bells attached to the harness of such horse; or shall place or leave on any of the streets, squares, lanes or passages, in such manner as to obstruct or endanger the passage thereof, any horse or other beast, or cart, carriage, waggon, sleigh or slide, or shall, in or on any cart, carriage, waggon, sleigh or slide, carry or convey any timber, iron or other articles in such manner as to protrude two feet beyond the wheels of such cart, waggon or carriage, or, if a slide or sledge, beyond the bars thereof, shall for every offence forfeit and pay a penalty not exceeding twenty-five dollars.

**23.** All carts and waggons employed or used upon any of the public roads or streets of this Island, shall have the owner's name painted in full length on some conspicuous part thereof, in letters of not less size than two inches, and painted in white on a black ground, or black on a white ground, under a penalty not exceeding ten dollars.

**24.** All carriages, carts, waggons, catamarans, sleighs and other vehicles, shall, by the person in charge of the same, on meeting any other carriage, cart, waggon, catamaran, sleigh or other vehicle, be conducted and kept on the left side of the road, so far as the state of the highways or roads will permit, and each person conducting such vehicle shall give one half of the said road to the other, under a penalty not exceeding ten dollars.

**25.** If any goat without a good substantial yoke, of which the lower bar shall be three feet, and the upper bar not less than eighteen inches in length, or any pig shall be found wandering or straying in or about any of the streets, squares, lanes or passages aforesaid, any person may impound said goat or pig in the nearest common pound, and the owner of every such goat or pig so found as aforesaid, shall forfeit and pay a sum not exceeding two dollars, together with reasonable charges of impounding and keeping the same, and such goat or pig shall be detained until said penalty and charges shall be paid; and if the same be not paid within two days after such goat or pig shall be impounded, any stipendiary Justice, resident in the same locality, may declare such goat or pig forfeited, and, on two days' notice in writing being given, the same may be sold by order of the said Justice, and the expenses and penalty deducted from the proceeds of such sale: Provided, that in all towns or settlements in this Island,

except Harbor Grace and St. John's, swine with a yoke as aforesaid may be permitted by the stipendiary Magistrates to go at large.

**26**. Every person found drunk in any highway or other public place, whether a building or not, or on any licensed premises, shall be liable, on conviction before a stipendiary Magistrate or Justice, to a penalty not exceeding one dollar, or, on a second conviction as aforesaid, within a period of twelve months, to a penalty not exceeding four dollars, and, in default of payment thereof, to imprisonment not exceeding three days, and, on a third or subsequent conviction within the period of twelve months, to a penalty not exceeding ten dollars, or imprisonment not exceeding six days.

**27**. The Courts of Session in this Colony, within their jurisdiction, may make orders for the prevention of nuisances dangerous to personal safety or affecting public health, other than those mentioned in this chapter; such orders to be confirmed and approved of by the Governor in Council and published in tho *Royal Gazette*.

**28**. The orders of Session mentioned in the foregoing section, when confirmed and published, shall, at such time as may be appointed by the Governor in Council, have the same force and effect as if by this chapter specially enacted, under such penalties as may be prescribed by the said orders, and recoverable in the same manner as hereinafter provided for the recovery of penalties.

**29**. No person shall shew or expose any stallion, bull, ram, or he-goat, except in such place as a magistrate may appoint, or except in necessarily proceeding to or returning from such place, nor shall the owner or possessor allow any such stallion, bull, ram, or he-goat, to roam at large, except by permission of a stipendiary Magistrate or Justice of the Peace, under a penalty not exceeding fifty dollars.

**30**. The owner or possessor of any such stallion, bull, ram, or he-goat at large, shall be liable for all damage and injury committed by said animals to property and stock by injuring the breed, or in any other way whatsoever. The amount of such damages may be recovered by the person sustaining the same from the said owner or possessor in a summary manner before a stipendiary Magistrate or Justice of the Peace.

**31**. All bulls, horses, sheep and pigs in this Colony, except those intended for breeding purposes, and registered as hereinafter provided, shall be castrated at the times following, that is to say:—

All bull calves shall be castrated before they attain the age of one year.

Entire horses or colts before they attain the age of two years.

Ram lambs before six months.

Boar pigs before four months.

Provided nothing in this section shall be held to apply to animals which are kept strictly within their owner's premises or under the owner's control.

**32.** All owners of stock, rearing the same for breeding purposes, shall forward to the chairman of the Board of Agriculture or to the nearest Agricultural Society formed under the provisions of chapter 14 of these Consolidated Statutes, or to a stipendiary Magistrate or Justice of the Peace, a statement giving a description of the animal and any other facts relating thereto as may be in the possession of the said owner; such statement shall be in the form of schedule A to this chapter.

**33.** Any person offending against the provisions, or failing to comply with the requirements, of the two next preceding sections of this chapter, shall be subject to a penalty not less than one dollar and not exceeding twenty dollars, to be recovered in a summary manner before a stipendiary Magistrate or Justice of the Peace.

**34** Except where otherwise provided, all penalties and forfeitures imposed by this chapter shall be recovered in a summary manner before any stipendiary Magistrate resident in the town in which the offence shall be committed. All penalties and forfeitures under this chapter may be levied, as well as the costs of such proceedings, in case of non-payment, by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of said stipendiary Magistrate.

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## SCHEDULE.

To

The undersigned has in his possession (or is the owner of) (here state the kind of animal, his age and general description.)

(Name of owner or possessor.)

(Address.)

# CHAPTER 37.

## Of Egress from Churches, Theatres and other Public Buildings.


SECTION
1.—Doors of all churches, theatres, &c., shall open freely outwards.
2.—Congregations and trustees holding churches to be liable to provisions of this chapter.
3.—Buildings at which more than two hundred persons assemble shall have two means of exit.
4.—No church, theatre, &c., to be constructed in St. John's unless plans first sent to Municipal Council.
5.—Penalty.
6.—Chapter not to apply to convents or private chapels.


**1.** In all churches, orphanges, schools, theatres, halls or other buildings heretofore or hereafter constructed or used for holding public meetings, or for places of public resort or amusement, all the doors shall be so hinged that they may open freely outwards, and all the gates of outer fences, if not so hinged, shall be kept open by proper fastenings during the time such buildings are publicly used, to facilitate the egress of people in case of alarm from fire or other cause.

**2.** Congregations possessing corporate powers, and all trustees, holding churches, or buildings used for churches, and all other persons holding churches, or buildings used for churches, shall be jointly and severally liable as trustees of such congregations, to the provisions of this chapter.

**3.** All churches or other buildings where the public may at any time congregate in greater numbers than two hundred, shall forthwith be furnished (if they be not already supplied), with two distinct and separate doors or means of exit, of not less than five feet in width.

**4.** No buildings intended for use as churches, orphanages, schools, theatres, halls or buildings for public entertainment, shall be constructed in the city of St. John's without notice of the same being first given to the St John's Municipal Council, and a copy of the plans shall be sent to the said Council, and all or any orders that the said Council may make concerning the mode of egress from said buildings shall be carried out by the owners or builders, occupiers or tenants, under a penalty of one hundred dollars, to be recovered in a summary manner before a stipendiary Magistrate or Justice of the Peace.

**5.** Any person, persons or corporations violating the provisions of this chapter other than provided for by the next preceding section, shall be liable to a fine not exceeding fifty dollars, to be recovered by any person who shall sue for the same in a summary manner before a stipendiary Magistrate or Justice of the Peace.

**6.** This chapter shall not be construed to apply to convents or private chapels connected therewith.

# CHAPTER 38.

## Of the Prevention of Interments in certain Burial Grounds.


SECTION
1.—In certain burial grounds in St. John's interments to cease.
2.—Burial grounds to remain under care of clergy, &c., of churches to which they belong.
3-4.—Governor in Council may declare burial grounds closed in certain cases.
5.—Penalty for contravention of this chapter.


**1.** All the burial grounds situate in St. John's within the limits hereinafter mentioned shall cease to be used for the interment therein of the bodies of deceased persons; and no person shall inter the body of any deceased person within the limits following, that is to say: Commencing at the southern end of the Gas Works fire-break; thence following the direction of the said fire-break north-westerly, sixteen hundred and fifty feet more or less, until it intersects the road leading to Monday's pond; thence running north-easterly in a straight line seven thousand three hundred feet, more or less, to the bridge over the stream running from Upper Long pond, and situate on the Portugal Cove road, near Rennie's Mill; thence from the said bridge, following the course of the said stream two thousand eight hundred feet, more or less, easterly, to the north-west angle of a lot of land granted to the Lord Bishop of Newfoundland, and appropriated as a cemetery; thence following the western boundary line of the said cemetery, southerly, five hundred and seventy-six feet, more or less, to the south-west angle thereof; thence following the southern boundary of the said cemetery, easterly, four hundred and fifty-six feet, more or less, to its south-eastern angle, and thence in a straight line to the junction of the roads leading to Quidi Vidi: thence following the direction of the last-named road, easterly, to the stream running from George's pond; thence following the direction of the said stream, southerly, to the Ordnance boundary line; thence following the direction of the said boundary line, westerly and southerly, to the shore; and thence following the winding of the shore westerly, to the place of commencement: except the ground granted to the late Right Reverend Bishop Fleming, and described in a certain grant, bearing date the thirtieth day of June, Anno Domini one thousand eight hundred and thirty-eight.

**2.** The burial grounds situate within the the limits aforesaid shall remain under the care, management, direction and control of the clergy, church wardens, trustees or committee men respectively of the churches or congregations to which the same belong, and in whom the said burial grounds are at present vested; and shall be fenced, protected, planted and managed in such manner, and under such regulations as the clergy, church wardens, trustees or committees of the churches or congregations to which the said burial grounds belong shall establish,

**3** When the Clergyman, Churchwardens, Trustees, or Committee, having the care, management, direction and control of any burial ground, shall make it appear, to the satisfaction of the Governor in Council, that it is desirable for sanitary or other reasons that interments in such burial ground should be discontinued, the Governor in Council may issue a Proclamation declaring such burial ground closed from a certain date, to be mentioned in such Proclamation, and from thenceforth the bodies of deceased persons shall not be interred in such burial ground.

**4**. The Governor in Council may by Proclamation prohibit the interment of the bodies of deceased persons in any town or settlement within certain limits, to be defined in such Proclamation, after a date to be therein mentioned, and from thenceforth the bodies of deceased persons shall not be interred within such limits.

**5**. Any person interring or attempting to inter the body of any deceased person, in contravention of the provisions of this chapter, shall forfeit and pay a penalty not exceeding one hundred dollars, to be recovered in a summary manner before a stipendiary Magistrate, and in default of payment shall be liable to imprisonment for any term not exceeding three months.

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# CHAPTER 39.

## Of Inflammable Oils.


| Section | Section |
|---|---|
| 1.—Not more than five gallons of certain oils to be kept in certain towns. | 5.—Recovery of penalties. |
| 2.—Definition of "building" or "place." | 6.—Fees for storage. |
| 3.—Justice may issue warrant to search. | 7.—Rules and regulations as to storage, &c. |
| 4.—Oils found to be seized ; penalties. | 8.—Buildings to be provided before this chapter enforced. |


**1**. Any person who shall, in the town of St John's, Harbor Grace and Carbonear, except in buildings approved of by the Governor in Council for the storing of such oils,

Keep in any building or cellar situate on the south side of Water Street, in each of these towns,

Or between that and the water, such buildings or cellars having an entrance towards or access of the waters of the respective harbors,

Or in or on any wharf, yard or similar place situated as aforesaid,

Or on board any ship, vessel or boat,

Or in or upon any craft, shed, or any other place in any of the harbors of St. John's, Harbor Grace or Brigus,

more than five barrels or tierces of equal quantities of kerosene, paraphine, naphtha, or other inflamable oils,

Or in buildings or yards or similar places not situate as aforesaid in said towns of St. John's, Harbor Grace and Carbonear, or situate in the town of Brigus, more than two barrels or tierces of said oils or equal quantity,

shall be guilty of an offence against this chapter and shall upon conviction forfeit and pay a sum not exceeding one hundred dollars for the first offence, not exceeding two hundred dollars for the second offence, and for a third offence forfeit and pay a sum not exceeding four hundred dollars, and the Justice before whom the information or complaint is heard shall, in addition to the foregoing penalty, make order for the confiscation and sale of said oils and cause the same to be sold by public auction: Provided that nothing in this chapter contained shall be construed to apply to any of the said oils brought into any of the said ports and laden on board of any vessel, lighter, boat or craft in course of or awaiting actual discharge, or to any of the said oils laden on board of any such vessel awaiting departure in the course of shipment intended for immediate exportation.

**2.** All buildings and places adjoining each other and occupied together by the same person or persons shall be deemed one building or place for the purposes of this chapter.

**3.** Any Justice of the Peace, residing within the judicial district in which the said towns are respectively situate, may, upon complaint made upon oath by any person, that he has reasonable cause to suspect that any larger quantity of said inflammable oils is deposited or kept in any place as aforesaid, within the said towns, contrary to the provisions of this chapter, issue his warrant to a constable to search for the same, in the day time, and for that purpose, admittance being first demanded by such constable and refused by the proprietor or occupant of any such place wherein it is so suspected that such oils are unlawfully, kept or deposited, such constable may, if there shall be occasion, break open any such place as aforesaid, and enter into, examine and search the same, and if upon any search or examination, a greater quantity of said oils than by this chapter is allowed, shall be found by him this shall be *prima facie* evidence of an offence against this chapter.

**4.** Any constable may seize any such oils so found by him and shall, without delay, remove and deposit the same in a building to be approved of by the Governor in Council, as aforesaid, for that purpose, and without delay then give information, and make complaint of such seizure before one or more of Her Majesty's Justices of the Peace aforesaid, who shall

thereupon summon the owner or owners of said oils so seized, or person in whose place or keeping the said oils shall be found, requiring the said party or parties to appear and answer or defend the said information or complaint, which shall by the said Justice be heard and determined in a summary way; and if the said person so summoned shall make default in appearance to the said summons, or, after appearance and a due hearing of the said complaint or information, the said Justice shall be of opinion that the party accused has concealed or attempted to conceal the said oils or has obstructed or caused to be obstructed any constable in the performance of his duties under this chapter or has improperly attempted to defeat the ends of justice in this behalf he shall in addition to the fines and penalties imposed by this chapter make order for the confiscation and sale of the said oils and cause the same to be sold by public auction and after payment of such reasonable costs as the said Justice shall award to be paid out of the proceeds of the sale one half of the net residue of the said proceeds shall be paid to the informer and one half towards defraying the expenses of the fire companies of the town in which the offence was committed.

5. Every person being owner of said oils, and the person having the same in charge or keeping, and the occupant of the place wherein the same shall be unlawfully deposited or kept, shall, on due conviction of having wilfully done anything contrary to the provisions of this chapter, respectively forfeit and pay the penalties provided for by the first section of this chapter, to be recovered at the suit of any person before a Justice of the Peace, as aforesaid, together with full costs of suit; one half of the money so recovered to be paid to the person who shall inform and sue for the same, and the other half to Her Majesty, to be applied towards defraying the expenses of fire companies of the said towns. Proceedings under this chapter shall be commenced within twelve months next after the commission of the offence.

6. For the purpose of defraying the necessary expenses attending the management of the buildings for the storage of the said oils, and paying the interest upon the loan raised to provide for the cost of erecting the same, the Governor in Council may from time to time, regulate, determine and order the scale of fees and charges to be paid for the storage of all such oils stored in the said buildings.

7. The Governor in Council, from time to time, may make rules and regulation of the storing thereof, and if necessary for defining, for the purposes of this chapter, the limits of towns.

8. This chapter shall come into operation, in the several localities herein before mentioned, after a building or buildings shall be provided and approved by the Governor in Council, as aforesaid, and proclamation thereof shall have been made, and shall, in regard to said respective towns, be only in operation from time to time while provision, approved as afore-

said shall continue to be afforded; and provided also that this chapter shall not apply to oils in the course of being landed or shipped from or on board vessels, for twenty-four hours from the commencement of such landing or shipping.

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# CHAPTER 40.

## Of Storing Gunpowder in the Towns of St. John's, Harbor Grace and Carbonear.

SECTION
1.—Not more than twenty-five pounds of gunpowder to be kept in any house, &c.
2.—Nor in any vessel longer than twenty-four hours after coming alongside wharf, &c.
3.—Magistrates may issue warrants to constables to search premises, &c.
4.—Penalties.
SECTION
5.—Rates of storage for gunpowder.
6.—Gunpowder shall be carried by water.
7.—Limits of Harbor Grace.
8.—Limits of Carbonear.
9.—Chapter not to apply to gunpowder stored in Her Majesty'e store-houses, &c.
10.—Meaning of term "houses" herein.

**1.** No person shall have more than twenty-five pounds weight of gunpowder in any house occupied or used by him in the town of St. John's, Harbor Grace or Carbonear, or within one mile thereof, except in a magazine near the Crow's Nest in the town of St. John's, or in any magazines now existing in the towns of Harbor Grace and Carbonear, or in any other public magazine which may, by the Governor in Council, be appointed for the safe storing of gunpowder.

**2.** Not more than twenty-five pounds weight of gunpowder shall be kept at any one time in any ship in the harbor of St. John's, Harbor Grace or Carbonear longer than twenty-four hours after such ship shall have come alongside of any wharf or alongside of any other ship, or shall be anchored, moored or stationed within any distance less than fifty fathoms from any wharf or other building: Provided, that this chapter shall not extend to any ship or vessel of war belonging to Her Majesty, or to any ship employed in the public service of the Government.

**3** Any Magistrate or Justice residing within the judicial districts in which the said towns are situated, on complaint made upon oath by any person that he has reasonable cause to suspect that a greater quantity of gunpowder than is by this chapter allowed is deposited in any house within the said towns or the limits aforesaid, or on board any ship in either of the said harbors, may issue his warrant to a constable to search for the same in the day time; and for that purpose, admittance being first demanded by such constable and refused by the proprietor or occupant of any such house, or by the master or other person in charge of any ship in the harbors aforesaid wherein it is so suspected that gunpowder is unlaw-

fully deposited, such constable may, if there shall be occasion, break open any such house or any such ship, and enter and search the same; and if upon any such search a greater quantity of gunpowder than by this chapter is allowed shall be found by him, such constable shall seize the same, and shall without delay remove the gunpowder so seized and deposit the same in the magazine, and without delay then give information and make complaint of such seizure before a Justice, who shall thereupon summon such owner of the gunpowder so seized, or person in whose house or in whose ship or in whose keeping the said gunpowder was found, requiring the said party to appear and defend the said information or complaint, which shall by the said Justice be heard and determined in a summary way; and if the said person so summoned shall make default in appearance, or after appearance and hearing the said Justice shall convict the defendant, he shall make order for the confiscation and sale of the said gunpowder, and after payment of such reasonable costs as the said Justice shall award to be paid out of the proceeds of the sale, one half of the net residue of the proceeds shall be paid to the informer and the other half to the Receiver General for the use of the colony.

**4.** If any person shall have any greater quantity of gunpowder than twenty-five pounds at any time in any house within the said towns or within one mile of the same, (except as hereinbefore excepted), or shall have any larger quantity of gunpowder than twenty-five pounds at any one time in any ship in the said harbors, longer than twenty-four hours after such ship shall have come alongside of any wharf, or alongside of any other ship, or shall be anchored, moored or stationed within any distance less than fifty fathoms from any wharf or other building, all such gunpowder over and above the weight of twenty-five pounds shall be forfeited, and every such person being owner of the said forfeited gunpowder, and the person having the same in charge or keeping, and the occupant of the house, and the owner or master of the ship wherein such gunpowder shall be deposited, shall, on conviction of having wilfully done anything contrary to the provisions of this chapter, whereby any such gunpowder shall become liable to forfeiture, forfeit and pay for the first offence fifty dollars, for the second offence one hundred dollars, and for the third offence one hundred and fifty dollars, to be recovered at the suit of any person in the Supreme or District Courts of this island, together with costs; one half of the forfeitures so recovered to be paid to the person who shall inform and sue for the same, and the other half to the Receiver General for the use of the colony: Provided that such proceeding shall be commenced within twelve months next after such forfeiture or penalty shall be incurred.

**5.** For all gunpowder stored in the said magazines and taken out of the same within one year the following rates and prices shall be paid, that is to say: for every barrel fifty cents for every half barrel thirty cents, and for every quarter barrel twenty cents; and if such gunpowder shall be stored in the said magazines for any greater time than one year, then

there shall be paid for every one hundred pounds weight of the same, at and after the rate of fifty cents per annum.

6. All gunpowder which, in pursuance of the provisions of this chapter, shall be carried to and removed from the said magazines or any other magazines hereafter to be built or appointed under the provisions of this chapter, shall at all times be conveyed and carried by water, as far as the same can be water-borne.

7. The town of Harbor Grace, for the purposes of this chapter, shall extend from Bear's Cove to Ship's Head inclusive, and one half of a mile from high-water mark within the limits aforesaid

8. The town of Carbonear, for the purposes of this chapter, shall be included within a line extending from Crocker's Cove Point to Mosquito Point, and including all buildings erected within one half of a mile of high-water mark on the northern and western sides, and within one quarter of a mile of the southern side of the said harbor of Carbonear.

9. The provisions of this chapter shall not extend or be applied to the storing, warehousing or keeping of any gunpowder being the property of Her Majesty in any of Her Majesty's storehouses, warehouses, depots, or magazines in the island.

10. The term "house" in this chapter, shall include storehouse, warehouse, shop, cellar, yard, wharf or other building; and all buildings and places adjoining each other and occupied together shall be deemed to be one house or place.

# CHAPTER 41.

## Of the Storage, &c., of Dynamite and other Explosives.


SECTION

1.—Dynamite, &c., not to be had any in town, &c., without license.
2.—Magistrate may impose conditions.
3.—Governor in Council may alter such conditions.
4.—Penalties, &c., for violation of terms of license.
5.—Dynamite, &c., not to be kept in ships; Proviso as to transhipment; Proviso as to ships of war, &c.
6.—Dynamite, &c., may be landed, but at once removed.
7.—Limits of St. John's defined.
8.—Limits of Harbor Grace defined.
9.—Limits of Carbonear defined.
10.—Magistrate or Justice may issue warrants to constables to search premises, &c.; hearing, summary; confiscation and sale of dynamite, &c.
11.—Dynamite, &c., not to be carried in any vessel carrying passengers under Government contract.
12.—Fines may be imposed in addition to penalties and forfeitures.
13.—Dynamite, &c., to be carried by water; penalty.
14.—Summary recovery of fines, &c.
15.—Chapter not to apply to dynamite, &c., the property of Her Majesty.
16.—Meaning of term "house."
17.—This chapter not to affect chapter 39 or 40, Consolidated Statutes.
18.—Governor may declare limits of towns, &c.

1. No person shall have, in any house, or on any wharf or premises, owned, occupied, or used by him, in any town or settlement in this colony, or within one-half a mile of any such town or settlement, any dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, except in pursuance of a license, to be granted under this chapter, by a stipendiary Magistrate.

2. The licenses provided for in the first section of this chapter may be granted for a limited time, and subject to such conditions as may, by such stipendiary Magistrate, be deemed necessary for the purpose of preventing or diminishing the risk of damage from explosion.

3. The Governor in Council shall, upon the application of any person holding or applying for any such license, have the power to alter or modify the terms or conditions of such license, as imposed, or proposed so to be, by the Magistrate granting the same.

4. Any person holding any such license, who shall be guilty of a violation of any of the terms or conditions thereof, shall be liable to the same proceedings, forfeitures, and penalties, as are provided by sections ten and twelve of this chapter.

5. No dynamite, nitro-glycerine, gun-cotton, or other such explosive substances shall be kept in any ship or vessel in the harbor of any town or settlement in this colony, longer than twenty-four hours after the arrival of such ship or vessel: Provided that, in case of transhipment, such further time may be allowed as any stipendiary Justice of the Peace may, on application, deem reasonable and direct. Any vessel obtaining the special privilege aforesaid, shall, for such further time, remain anchored, moored, or stationed, not less than fifty fathoms distant from any wharf or other building: Provided that this chapter shall not extend to any ship or vessel of war belonging to Her Majesty, or any foreign country or state, or to any vessel employed in the service of the Government of this colony.

6. Nothing in this chapter shall be construed to prevent any person from landing upon or receiving at his water-side premises, or those of others, any such dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, provided the same be forthwith removed to a place at a distance of more than one-half of a mile from any such town or settlement.

7. The limits of the town of St. John's shall for the purposes of this chapter, be as prescribed in the 'St John's Municipal Act, 1892."

8 The town of Harbor Grace, for the purposes of this chapter, shall extend from Bear's Cove to Ship's Head, inclusive, and one-half of a mile from high-water mark, within the limits aforesaid.

9. The town of Carbonear, for the purposes of this chapter, shall be included within a line extending from Crocker's Cove Point to Mosquito Point, including all buildings erected within one-half of a mile of high-water mark on the northern and western sides, and within one-quarter of a mile of the southern side of the said harbor of Carbonear.

10. Any Magistrate or Justice, on complaint made on oath by any person, that he has reasonable cause to suspect that dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, is deposited in any house, or on any wharf, or premises, within any of the towns or settlements in this colony, or the limits aforesaid, or on board any ship in any of the said harbors, may, provided such house, wharf, premises, or ship be within the limits of his jurisdiction, issue his warrant to a police officer, or constable, to search for the same in the day time, and for that purpose, admittance being first demanded by such police officer, or constable, and refused by the proprietor, or occupant, of any such house, wharf, or premises, or by the master, or other person in charge of any ship in the harbors aforesaid, wherein it is suspected that dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, is unlawfully deposited, such police officer, or constable may, if there shall be occasion, break open any such house, or into, or upon any such wharf, or premises, or any such ship or vessel, and search the same; and if upon any search any dynamite, nitro-glycerine, gun-cotton, or other such explosive substance shall be found, such police officer, or constable, shall seize the same, and shall, without delay, remove the articles or substance so seized and deposit the same in a place to be appointed by such Magistrate or Justice, and without delay then give information and make complaint of such seizure before a Magistrate or Justice, who shall thereupon summon the owner of such dynamite, nitro-glycerine, gun-cotton, or other such explosive substance so seized, or the person in whose house, or in whose ship, or upon whose wharf, or premises, or in whose keeping the said dynamite, nitro-glycerine, gun-cotton, or other such explosive substance was found, requiring the said party to appear and defend the said information or complaint, which shall, by the said Magistrate or Justice, be heard and determined in a summary way, and if the person so summoned shall make default in appearance, or, after appearance and hearing, the said Magistrate or Justice shall convict the defendant, he shall make order for the confiscation and sale of the said dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, and after payment of such reasonable costs as the said Magistrate or Justice shall award to be paid out of the proceeds of the sale, one-half of the net residue of the proceeds shall be paid to the informer, and the other half to the Receiver General for the use of the Colony.

11. No dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, shall be shipped or carried in or on board of any steamer or other vessel carrying passengers from any part of this colony to any other part thereof, under contract with the Government for the carriage of such passengers.

**12**. In addition to the penalties and forfeitures provided by the tenth section of this chapter, any person guilty of a wilful violation of any of the provisions of this chapter, shall be liable for the first offence to a fine not exceeding twenty-five dollars, or imprisonment for a term not exceeding one month; for the second offence to a fine not exceeding fifty dollars, or imprisonment for a term not exceeding two months; and for the third or any subsequent offence, to a fine not exceeding two hundred dollars, or imprisonment for a term not exceeding four months.

**13**. All dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, removed from one part of the colony to another part thereof, or from one place to another in any town or settlement therein, shall at all times be conveyed and carried by water, as far as the same can be conveniently water-borne; and any person wilfully offending against the provisions of this section shall, upon conviction before a Magistrate or Justice, forfeit and pay for the first offence the sum of twenty dollars; for the second offence, fifty dollars; and for every subsequent offence, one hundred and fifty dollars.

**14**. The fines and imprisonment provided for in the twelfth and thirteenth sections of this chapter shall be recovered before, and imposed by, any Magistrate or Justice of the Peace in a summary manner.

**15**. The provisions of this chapter shall not extend or be applied to the storing, warehousing, or keeping of any dynamite, nitro-glycerine, gun-cotton, or other explosive substance, being the property of Her Majesty, in any of Her Majesty's storehouses, warehouses, depots, or magazines, in this colony.

**16**. The term "house," in this chapter, shall include storehouse, warehouse, shop, cellar, yard, or any building whatsoever; and all buildings and places adjoining each other, and occupied together, shall be deemed to be one house or place.

**17**. Nothing in this chapter contained shall be construed to apply to, or in any way affect, title IV, chapter 40, of these Consolidated Statutes, entitled "Of Storing Gunpowder in the Towns of St. John's, Harbor Grace or Carbonear," or title IV, chapter 39, of said Consolidated Statutes, entitled "Of Inflammable Oils."

**18**. The limits of towns or settlements in this colony, other than St. John's, Harbor Grace and Carbonear, may, for the purposes of this chapter, be declared and regulated by the Governor, by proclamation, to be published in the *Royal Gazette*.

# CHAPTER 42.

## Of the St. John's Municipal Council and the Municipal Affairs of the Town.


SECTION

1.—Limits of the town of St. John's.
2.—Four wards for purposes of election.
3.—St. John's Municipal Council.
4.—Two members to be appointed by the Governor and five elected.
5.—Term of office and date of election.
6.—Vacancy in Council; how filled.
7.—Vacancy; how caused.
8.—Qualification of members
9.—Members disqualified from office, pay or contract under or from Council.
10.—Penalty for violation of section nine.
11.—Member of Legislature shall not be appointed by Government.
12.—Penalty for sitting or voting when disqualified.
13.—Qualification of voters.
14.—Every ratepayer entitled to one vote.
15.—Respecting corporations.
16.—Definition of "ratepayer."
17.—Joint tenants and tenants in common, are ratepayers.
18.—A ratepayer only one vote.
19.—Voters must be registered.
20.—Resgistration and lists of voters.
21.—Mode of election.
22.—Nomination fee of $50, proportion to be returned in certain cases.
23.—Appointment of officers and servants.
24.—Quorum.
25.—Power to make bye-laws.
26.—Compensation to members.
27.—All contracts shall be in the name of the chairman.
28.—Power to substitute servant or officer in certain cases.
29.—Re-building of the town.
30.—Boundaries of streets.
31.—Buildings in certain cases to be of uninflammable material.
32.—Gower street boundaries
33.—Boundaries of cross-streets and firebreaks.
34.—Widths and boundaries of certain cross-streets and firebreaks.
35.—Marks of stone or iron to show boundaries of streets.
36.—Plan of streets.
37.—Penalty for removing or destroying marks.
38.—No new road, street or lane shall be of less width than fifty feet.
39.—Notice to be given of building or excavating upon any street.
40.—Respecting buildings on main streets.
41.—Claims to be determined by arbitration.
42.—Duties of arbitrators.
43.—Not compulsory to remove houses.
44.—Concerning sidewalks.

SECTION

45.—Council may dispense with opening or widening streets.
46.—Respecting party walls.
47.—Council to decide disputes respecting party walls.
48.—Penalty for not obeying order of Council.
49.—Use of party walls.
50.—Buildings within the lines of any street, &c., prohibited.
51.—Buildings in contravention of this chapter to be public nuisances.
52.—Roof ladders.
53.—Doors and window sills to be of uninflammable material in certain cases.
54.—Council may permit erection of wooden steps in certain cases.
55.—Council may grant part of street in certain cases.
56.—Where by alteration portion of street adjoins frontage of any proprietor, he shall take such portion at valuation to be fixed by arbitration.
57.—Section 57 not to apply to certain erections in Buchanan street.
58.—Council to lay out line of street on South side.
59.—Council may alter line of street.
60.—Street to be public and subject to provisions of this chapter.
61.—Street to be called Harvey Street, South side, and to have not less than five firebreaks.
62.—Whenever repair of building amounts to forty per cent. of cost, such repair shall be re-building.
63.—Council shall exercise powers of General Water Company.
64.—Council shall manage water supply of the town.
65.—For laying pipes Council may dig, trench and break public streets and private lands.
66.—Compension to parties whose lands disturbed.
67.—Cost of repairs to service pipes.
68.—Council may introduce service pipes into any building subject to assessment.
69.—Persons authorized by Council to have access to any building at certain hours.
70.—Manner of construction of cisterns, closets and baths.
71.—Penalty for wrongful use or waste of water.
72.—Penalty for obstructing, &c., servants of Council in discharge of their duty.
73.—Council may cut off water from houses in certain cases
74.—Council shal have control of Windsor Lake.

SECTION
75.—Power to appropriate property on margin of Windsor Lake.
76-77.—Powers of Council respecting making and repairing of roads and bridges, abatement of nuisances and lighting of the town.
78.—Compensation for property.
79.—Power of Council respecting sewerage and cleansing.
80.—Respecting drains and sewers.
81.—No person to finish a dwelling house without suitable sewers.
82.—Penalty.
83.—Mode of recovery of penalty.
84.—Notice to Council respecting sewers.
85-86.—Powers of servants of Council.
87-88.—Powers of Council.
89.—Respecting claims for damage.
90.—Municipal supervisor.
91.—Municipal inspectors.
92.—Powers of Municipal supervisor and inspectors.
93.—Penalty for obstructing supervisor or inspectors.
94.—Respecting water and earth closets.
95.—Duties of Municipal supervisor.
96.—Respecting impounders.
97.—Respecting female dogs.
98.—Penalty.
99.—Penalties shall be cumulative.
100-101.—Bannerman Park.
102.—Annual payment of eighty dollars to the Governor.
103.—Respecting Victoria Park.
104.—Council may make rules and regulations for management of parks.
105.—Volunteer Fire Brigade.
106.—Brigade to be under control of superintendent.
107.—Rules for brigade to be published in *Royal Gazette*.
108.—Respecting fire wardens.
109.—Senior warden; duties and powers at a fire.
110.—Penalty.
111.—Majority of wardens may order removal of houses.
112.—Compensation for houses pulled down or removed.
113.—$3,500 to be annually appropriated for brigade.
114.—Fire Insurance Companies to furnish annual statements of premiums received.
115.—Council shall assess upon premiums one-sixth of appropriation under sec. 113.
116.—Fire wardens and members of brigade exempt from juries.
117.—Penalty for false alarm.
118.—Taxes and assessments shall continue to be collected.
119.—Power of Council to raise and collect rates and assessments.
120.—What buildings liable to assessment.
121.—Council to appoint appraisers.
122.—Appraisers' books to be open for examination.
123.—Court of revision.
124.—Appeal from court of revision.
125.—Appraisements of October, 1891, to continue in force.
126.—Additional rates may be imposed.
SECTION
127.—One service pipe into two or more buildings shall render occupier liable for all.
128.—Buildings exempt from assessment.
129.—Property mortgaged, how assessed.
130.—Mode of estimating rent value.
131.—Special appraisements.
132.—Houses becoming liable for occupier's rates between appraisements to pay upon rent-value appraised for landlord's or owner's interest.
133.—Sewerage tax.
134.—Indemnity.
135.—Vacant land tax.
136.—Triennial appraisement to determine basis of taxes.
137.—Examination of books and revision courts.
138.—Council may fix and impose annual rates upon such land and remit same in certain cases.
139.—Council may alter and change such rates.
140.—Land excepted in section 135.
141.—Property tax or rate.
142.—Triennial appraisements respecting same.
143.—All taxes payable half-yearly in advance.
144.—Rates in certain cases to be a preferential charge.
145.—Assessments or ground rents to be landlord's taxes.
146.—Numbering of houses.
147.—Rates to be paid by vessels entering or clearing at Custom House.
148.—To be paid and recovered in same manner as light dues.
149.—Vessels paying rates entitled to supply of water.
150.—Receiver General to pay certain sums to Council annually.
151.—Sundry special taxes and rates.
152.—To be fixed and altered by resolution to be published.
153.—Year for purpose of taxes to begin on January 1st.
154.—Council may apportion annual taxes in certain cases.
155.—Council may issue licenses in certain cases.
156.—Application of moneys raised by Council.
157.—Council to furnish accounts annually to Governor in Council to be laid before Legislature.
158.—Council not to expend beyond their income without sanction of Legislature.
159.—Purposes for which Council may make bye-laws and regulations.
160.—Resolutions of Council to be published in *Royal Gazette*.
161.—Publication in *Royal Gazette prima facie* evidence.
162.—Council to have control of roads, &c., on South side.
163.—Provisions respecting arbitrations.
164.—Recovery of taxes, rates, &c.
165.—Actions by or against Council shall be in name of chairman.
166.—No action without one months' previous notice in writing.
167.—Respecting the regulation of licensed cab-drivers.
168.—Offences under this chapter to be tried summarily.
169.—Appeal to Supreme Court.
170.—Short title.

LIMITS OF THE TOWN AND WARDS.

**1.** For the purposes of this chapter, the town of St. John's shall be held to be comprised within the following boundaries or limits, hereinafter described as the town or city limits, namely:—

Commencing at Chain Rock, thence in a straight line to the north-east corner of Deadman's Pond; thence in a straight line to the north-east angle of the Penitentiary grounds; thence to the north-west angle of the Roman Catholic cemetery; thence in a straight line to Allendale bridge, not inclusive; thence in a straight line to the bridge over Monday pond brook, not inclusive, on the Monday pond road; thence following the said road to its junction with Hamilton street; thence in a straight line to Syme's bridge, not inclusive; and thence following in the centre of the river to the arch of the Long bridge; and thence to the place of commencement, but not including any part of the South-side.

**2.** For the purposes of the election of members of the Council, as hereinafter provided, the town shall be divided into five wards, to be called respectively, "Ward No. 1," "Ward No. 2," "Ward No. 3," "Ward No. 4," and "Ward No. 5," which said wards shall comprise and be bounded within the following limits and boundaries respectively, namely:—

WARD No. 1. All that part of the town east of the Queen's wharf; thence following the centre of the King's beach, King's road, Rennie's Mill road, to the northern limit of the town.

WARD No. 2. From the western boundary of Ward No. 1 to the centre of Clift's cove, up Market-house hill, along Duckworth street, westerly, then up Cathedral hill, Garrison hill, and Long Pond road, to the northern limit.

WARD No. 3. From the western boundary of Ward No. 2 to the centre of Warren's cove; thence up the centre of Adelaide street and Williams' lane to Le Marchant road; along Le Marchant road, easterly, to Cookstown road and Freshwater road, to the northern limit.

WARD No. 4. From the western boundary of Ward No 3 to the eastern boundary of Newman's waterside premises; thence up the centre of Springdale street and Flower hill firebreak to Le Marchant road; thence easterly along Le Marchant road, and thence along the continuation of Casey's lane to the northern limit.

WARD No. 5. All that part of the town situate west of the western boundary of Ward No. 4.

MANAGEMENT OF MUNICIPAL AFFAIRS.

**3.** The control and management of the local affairs of and pertaining to the town of St. John's, hereinafter more specifically set forth, shall be, and continue to be, vested in a board of seven members, to be called "The St. John's Municipal Council," and in this chapter hereinafter described as "the Council."

CONSTITUTION OF COUNCIL AND QUALIFICATION OF MEMBERS.

**4.** Two members of the Council shall be appointed by the Governor in Council, and five members shall be elected by the rate-payers.

**5.** The elective members of the Council shall hold office for a term of three years. The first election of members, after the passing of this chapter, shall take place at a date to be fixed by the Governor in Council, in the fourth week of the month of January, 1895, and on said date, or as near thereto as possible, in every third year from the first election. The members of the Council appointed by the Governor in Council shall hold office for a period of three years, concurrently with the elected members, subject to removal at any time during said periods.

**6.** In the event of a vacancy among the members of the Council, if the member whose seat has become vacant was appointed by the Governor in Council, he shall appoint a successor to fill the vacancy. If the member whose seat has become vacant was elected, the vacancy shall be filled by an election, to take place at a time appointed by the Council.

**7.** Any member of the Council who shall—

(1.) Be absent from the colony for the period of six calendar months continuously;

(2.) Be declared insolvent, (but having obtained his certificate of discharge, he shall become eligible for election or re-election);

(3.) Be convicted of any felony or misdemeanor; shall thereupon cease to be a member of the Council.

**8.** Except as hereinafter provided, any person shall be qualified to be a member of the Council who has for a period of one year next preceding his election or appointment, been liable to, and actually paid, rates or assessments to the amount of eight dollars and twenty-five cents per annum to the St. John's Municipal Council, either as ground landlord, owner, lessee, or occupier of any lands, tenements, buildings, or any interest therein, and is otherwise entitled to vote at an election of a member of the Council.

**9.** No member of the Council shall hold any office, place, or employment of emolument, profit or advantage from, under, or in connection

with the Council; or in any department of, in, or upon any work, service or business under the control, management or direction of the Council, directly or indirectly, himself or by any person whomsoever in trust for him, or on his account, undertake, execute or enjoy in the whole, or in part, any contract or agreement with the Council: Provided that this section shall not apply to a member of an incorporated body, when such corporation shall contract for the benefit of the company.

**10.** Any member of the Council who shall act in contravention or violation of any of the provisions of the next preceding section, shall thereupon cease to be a member of the Council, and his seat shall thereupon become vacant; and thereafter if he shall presume to sit or vote as a member of the Council, he shall, for each time he shall so sit or vote, forfeit the sum of two hundred dollars, to be recovered by any person who may sue for the same in the Supreme Court.

**11.** No member of the Legislature shall be appointed by the Government to be a member of the Council.

**12.** If any person hereinbefore disqualified or declared to be incapable to sit or vote in the Council shall be elected and returned, or nominated and appointed as a member of the Council, such election, return or appointment shall be void, and if any person so disqualified, as aforesaid, shall presume to sit or vote as a member of the Council, such person so sitting or voting shall, for each time he shall so sit or vote, forfeit the sum of two hundred dollars, to be recovered by any person who may sue for the same in the Supreme Court.

### Qualification and Registration of Voters.

**13.** Subject and except as hereinafter provided, the persons who shall be qualified to vote at the election of any member of the Council shall be every male British subject of the age of twenty-one years and upwards, who has, for a period of one year next preceding the election, occupied a dwelling-house within the limits of the town as above defined, or who having resided for one year preceding such election within the limits as above defined, has been liable to, and actually paid rates or assessments to the St. John's Municipal Council, *either* as ground landlord, owner, lessee or occupier of any lands, tenements, buildings, or any interest therein, or any other tax under this chapter. Every such person shall be deemed to be and hereafter described as a ratepayer.

**14.** Every ratepayer, in respect of property situate within the ward for which the election is held, shall be entitled to one vote for the election of a member for the said ward.

**15.** No member of a corporation or of any such body of persons shall be entitled to vote individually in respect of property belonging to such

corporation or body of persons, but every corporation shall be entitled to one vote, to be given by any of its officers appointed in writing by the corporation for that purpose.

**16.** Where property is held by an executor, administrator, trustee or other person in trust for the use or benefit of others, the person beneficially entitled shall be held to be the ratepayer in respect of such property.

**17.** Joint tenants, or tenants in common, shall be held to be entitled to vote as ratepayers in respect of property owned, held or occupied by them, as if that property were divided among, or held or occupied by them separately, according to their respective interests.

**18.** A ratepayer liable to assessment upon more than one property, or in respect of more than one interest in property in the same ward, shall not on that account be entitled to more than one vote in that ward.

**19.** Except as provided as to supplementary lists, no person shall be entitled to vote at any election of a member of the Council whose name has not been previously registered as a voter in the manner hereinafter prescribed.

**20.** Lists of voters for the several wards as defined by this chapter shall be made, published, revised, authenticated and furnished, as nearly as circumstances will permit, in the same manner and by the same officers, persons and courts respectively, who shall severally have, exercise, discharge and perform the same powers, rights, duties and authority as are provided by law in relation to the making, publishing, revising, authenticating and furnishing lists of voters for the election of members of the House of Assembly, and subject to the same regulations, conditions and provisions The Governor in Council shall have power to make such rules and regulations as may be deemed necessary for carrying into effect the provisions of this section, which rules and regulations shall be published in the *Royal Gazette*, and shall have the force and effect of law as if specially enacted therein.

### Election of Councillors.

**21.** All elections of members of the Council shall be held and conducted as nearly as circumstances will permit in the same manner as, and subject to the same regulations, conditions and provisions as are made, prescribed and provided by law in relation to elections of members of the House of Assembly, and all and singular the powers, duties and functions of the Governor in Council in relation to the election of said members of the House of Assembly shall apply to the election of members of the Council, and returning officers, deputy returning officers, poll clerks, magistrates, justice of the peace, constables and other officers shall ex-

ercise, perform and discharge all and singular the same powers, duties and privileges in and about and in relation to such election as are provided in the case of members of the House of Assembly.

**22.** Every candidate for the office of member of the Council shall, at the time of nomination, deposit with the returning officer the sum of fifty dollars. Every candidate for whom there shall be polled a number of votes equal to one-half of that polled for the successful candidate, for the same ward, shall be entitled to have one-half of the said deposit returned to him, and any candidate failing to obtain such one-half shall forfeit the said deposit to the Council, to be applied towards the expense of the election.

### Internal Affairs of Council.

**23.** The Council shall have power to employ and appoint such officers and servants as may be necessary for effectually carrying out the provisions of this chapter, and to fix the salaries of such officers and servants. All officers and servants of the Council shall hold office during the pleasure of the Council, or for such time as may be fixed by agreement: Provided that in the case of a clerk or a servant of the Board of Works transferred by the Governor in Council from the Board of Works to the Council, or in the case of the collector or any other clerk or servant of the Water Company, his removal from office or a reduction of his salary shall be subject to the confirmation of the Governor in Council.

**24.** Any four members of the Council shall be a quorum for the transaction of business.

**25.** The Council shall have power to make rules and bye-laws for the regulation and conduct of its own affairs; provided the same shall not be inconsistent with the provisions of this chapter.

**26.** Out of the funds at the disposal of the Council a sum not exceeding one thousand five hundred dollars per annum shall be applied to the compensation of the members of the Council for their services; of which the sum of six hundred dollars shall be paid to the chairman in quarterly payments; and from the remainder each of the other members shall be entitled to receive such sum as the Council shall determine for every actual attendance at meetings of the Council

**27.** All contracts or agreements of or with the Council shall be made in the name of the Council and signed by the chairman or, in his absence, a member of the Council duly authorized therefor by the Council.

**28.** In any case in which under this chapter powers are conferred or duties imposed upon any engineer, supervisor, inspector or other officer or servant of the Council, and the Council shall deem it necessary that the

said power or duties should be exercised or performed by any other or additional officers or servant of the Council, or other person acting under their authority, the Council shall have power by rule, regulation or bye-law, to be authenticated and promulgated as hereinafter provided, to substitute or add such other officer, servant or person, and to confer the said powers and impose the said duties upon the said substituted or additional officer or person, who shall thereupon exercise and perform the same in the same manner as the officer or servant designated by this chapter.

Re-Building of the Town and Widening of Streets, &c.

**29**. The following enactments shall be and continue to be in force in relation to the re-building of the town and the opening, widening and improvement of streets, firebreaks and lanes therein.

**30**. Water street shall extend from the eastern side of Quidi Vidi firebreak on the east, to Job's bridge on the west.

Duckworth street shall extend from Quidi Vidi firebreak aforesaid on the east to Williams' lane on the west.

New Gower street shall extend from the site of the late Theatre to Flower hill firebreak.

The street or firebreak commonly called George street shall be extended from Waldegrave street to Flower hill firebreak on the west, and from Queen's street to Williams' lane on the east.

The said streets shall be of the respective widths and according to such lines and boundaries as now exist and have been laid down under the superintendence of any supervisor of streets regularly appointed; and in such part of any of the said streets where the lines and boundaries have not been laid down under such authority, the Council shall determine such undefined lines and boundaries, which shall be laid down according to the provisions of this chapter.

**31**. No person shall build, erect or put up any building or erection other than such as shall be built of brick, stone or other uninflammable material, and roofed or covered with iron, slate or other uninflammable material, in such parts of the said town as are hereinafter described, that is to say:

On the south side and to the southward of Duckworth street;

On the south side and to the southward of George street;

On the south side and to the southward of a line drawn parallel to, and two hundred feet to the northward of, the north side of that part of Water street which lies between Flower hill firebreak and Job's bridge.

All houses, buildings and erections of wood which, since the ninth day of June, in the year one thousand eight hundred and forty-six, have been already built, or which shall hereafter be built on the south side and to the southward of Duckworth street and George street aforesaid respectively; and all houses, buildings and erections of wood which, since the thirty-first day of May, in the year one thousand eight hundred and fifty-one, have been already built, or which shall hereafter be built on the south side and to the southward of the said line drawn parallel to, and two hundred feet to the northward of the north side of that part of Water street which lies between Flower hill firebreak and Job's bridge, as aforesaid, shall be public nuisances, and shall be abated, as provided by this chapter.

**32**. Gower street shall extend from Cochrane place on the eastward, to the site of the late Theatre on the westward, and shall be of a width of not less than fifty feet throughout the same, according to such lines and boundaries as have been laid down by the Supervisor of streets and approved of by the Governor in Council, or according to such lines and boundaries as may hereafter be laid down by the Council and approved of in the manner aforesaid.

**33** The following cross streets or firebreaks shall be of the respective widths and according to the lines and boundaries hereinafter prescribed for the same, that is to say:—

CHURCH HILL FIREBREAK—On the south side of Water street the said firebreak shall be eighty feet in width from the western side line thereof, as it existed on the eighth day of June, in the year one thousand eight hundred and forty-six. From Water street to Duckworth street the eastern boundary of the said firebreak shall be a straight line, which commencing at the south-eastern angle of a house lately in the occupancy of John Berrigan, situate on the north side of Water street and erected on ground belonging to the estate of the late Thomas B. Studdy, shall thence from the said angle be produced northerly, by the western side of the said house and land, and by ground belonging to the Crown, to Duckworth street. The western boundary of the said firebreak between the said streets, shall be the eastern side of the Market-house ground. From Duckworth street to Gower street the said firebreak shall be one hundred feet in width from the western side line thereof, as it existed on the eighth day of June, in the year one thousand eight hundred and forty-six; and from Gower street to the Queen's road (or road in front of the Orphan Asylum school) the eastern boundary of the said firebreak shall be a line commencing at the south-west angle of a house lately in the occupancy of John Foley (the said house being on the eastern side of a lane leading northerly, by premises belonging to the estate of the late Martha Young, to the Queen's road), and thence running in a straight line northerly two hundred

and nineteen feet more or less, to the north-west angle of a house lately in the occupancy of David Murphy, and thence to continue in the same straight line fifty-six feet more or less to the south side of the said Queen's road; and the western boundary line of the said firebreak between the said Gower street and the said Queen's road shall be a line drawn from a point on the north side of Gower street, seventy-eight feet from and to the westward of the south-west angle of the said John Foley's house, to a point on the south side of the said Queen's road, eighty feet from and to the westward of the north-western angle of the said David Murphy's house; and from the said Queen's road to the rear line of the town, the western side line of the continuation of the said fire-break shall be according to the line heretofore prescribed; and a parallel line, at the distance of eighty feet, shall be the eastern side of the continuation of the said fire-break. Nothing herein contained shall be construed to affect the Church of England Cathedral.

CODNER'S COVE FIRE-BREAK.—A line drawn from the harbor along the eastern wall of the house lately in the occupancy of Peter H. Carter & Co., situate on the south side of Water street, and the existing western line of Adelaide street to New Gower street, shall form the western boundary, and the eastern side of Codner's cove and a line sixty feet distant from and parallel to the western side of Adelaide street shall be the eastern boundary thereof. Between New Gower street and Le Marchant road, the eastern boundary of the said fire-break shall be a line commencing at the north-west angle of a house lately occupied by Thomas Dammeral, lying north of New Gower street, and thence to run in a straight line north-westerly one hundred and sixty feet more or less to the north-west angle of a house lately occupied by John Connolly, and thence to a line forming an angle with and on the western side of the preceding line equal to one hundred and seventy-five degrees, and to be produced until the same strikes the said Le Marchant road; and a parallel line at the distance of sixty feet shall form the western side line of the said fire-break between the said New Gower street and the said Le Marchant road.

**34**. The following cross-streets, or fire-breaks, that is to say:—Quidi Vidi fire-break, Hill of Chips fire-break, King's Beach fire-break, Prescott street fire-break, McBride's cove fire-break, Beck's cove fire-break, Queen street, Stuart and Rennie's cove, Flower hill fire-break, Gas Works' fire-break, and so much of the street known as Church hill, and which is situate between the old church-yard and property belonging to Mr. Charles Henry Renouf, the estate of the late John Boyd, and to the late James Tubrid, shall be of the respective widths and according to such lines and boundaries as now exist and have been laid down under the superintendence of any supervisor of streets.

**35.** For the purpose of marking out and making plainly known the boundary lines of the several streets, fire-breaks, cross-streets, coves and roads hereinbefore described, the Council shall cause marks of stone or iron to be put down in such places as it shall deem necessary for the purpose aforesaid; and the lines of the said streets, cross-streets, firebreaks, coves and roads so marked and described shall be the lines and boundaries of the same.

**36** The plan already taken of the said streets, cross-streets, firebreaks, coves and roads, shall be preserved as a record of the lines and boundaries thereof, and shall, on all questions touching such lines and boundaries, be conclusive evidence of the same.

**37.** No person shall remove any of the said landmarks without authority in writing for so doing being first obtained from the Council; and any person who shall unlawfully remove, displace, alter, break, deface or damage, any of the said landmarks, shall forfeit and pay a fine not exceeding twenty-five dollars and costs, and in default of payment such offender shall be liable to be committed to prison for any period not exceeding thirty days.

**38.** No new road, street or lane, shall be opened or made by private parties through their own ground, within the limits of the said town, and upon which houses shall be proposed to be erected, of a less width than fifty feet; and no such new road, street or lane shall be opened or made within eighty feet of any other road, street or lane running parallel, or nearly parallel therewith, used as a thoroughfare, and upon which houses or buildings may front, unless upon an order of the Council first obtained for the purpose; and every such new road, street or lane, so opened or made contrary to the provisions of this chapter, shall be a nuisance, and be abated accordingly. And all houses and buildings hereafter to be built, whether on the site of any former building or not, and fronting upon any lane, or any such private road, street or lane now or hereafter to be opened northward of Duckworth street and New Gower street, within the said town, shall be at a distance of not less than twenty-five feet from the centre of such lane, street or road; and all persons, before laying down the sills or commencing the erection of houses or buildings fronting on such lanes, streets or roads, shall give six days' notice of their intention to the Council, who shall direct and control the laying down of such sills and the commencement of such erections; and all parties offending herein shall forfeit and pay a fine not exceeding twenty-five dollars, nor more than fifty dollars, and all houses and buildings hereafter built or erected contrary to the provisions of this section shall be public nuisances.

**39.** No person shall excavate or build upon the front line of any street, lane or fire-break, within the town of St. John's until he shall have given to, or left at the office of the Council a notice, in writing, at least two days before the commencement of such intended excavation or erec-

tion; and thereupon the Chairman of the Council shall examine the said projected work and see that it conforms to the line and levels of such street, lane or fire-break; and any person neglecting to give such notice, or acting contrary to the directions, in writing, of the Chairman of the Council, according to the provisions of this chapter touching the said work, shall be liable to a fine not exceeding the sum of twenty-five dollars, and any work done contrary to such written directions shall be a public nuisance and abated accordingly.

**40**. No person shall build or erect in the Queen's road, Military road, and the Circular road, the road between Job's bridge and Palk's house, and the road or street (being a continuation of New Gower street) which extends from Flower hill fire-break westerly, by the northern end of Hutching's street, and on the northern side of land granted to the late Hon. Robert Job, to the Marine Parade, or in any other lane or street within the town or suburbs which the Governor in Council has declared, or the Municipal Council may hereafter declare to be a main street, any house or other building nearer to the centre of such lane, road or street than twenty-five feet, nor within thirty feet of the centre of the road leading from the Ordnance yard to the Queen's bridge; and all houses or other buildings erected on any of the streets, roads or lanes named in this section, nearer to the centre thereof than twenty-five feet and thirty feet respectively, shall be public nuisances, and the like proceedings shall be had with respect to the same, and with respect to any person building or erecting the same, as are herein provided with respect to other public nuisances

**41**. The claims of all persons, whose interests in any lands or tenements have been in any way affected under the provisions of the foregoing sections, shall be determined by arbitration.

**42**. In estimating the damage which may be occasioned to any property by the making, widening or altering of any street, cove or fire-break, the arbitrators shall take into account any additional value or advantage which may accrue to the several proprietors and occupants from the convenience and security afforded by the widening of the said streets; and if the said arbitrators shall be of opinion that any proprietor of ground so required for streets, fire-breaks and coves, as aforesaid, may be indemnified at a less expense by having an equal portion of ground assigned to him from any ground adjoining, and that such adjoining ground may be taken without material injury to the proprietor thereof, the said arbitrators shall mark off, and in like manner appraise so much of the said adjoining ground as they may think sufficient to replace the ground required for the said streets, fire-breaks and coves, and the same so marked off shall belong to the first-mentioned proprietor and be in lieu of all indemnity, and the appraised value of the same shall be paid as, and shall be, a full satisfaction and release of the same and of all right and title thereto: Provided, that if the land so to be given shall not to be deemed an equivalent for the

land dedicated to the street or fire-break, the said proprietor shall be paid such sum as may be, with the land so to be given, a full satisfaction for the land so dedicated.

**43.** In the widening of any of the streets or fire-breaks established by this chapter, it shall not be compulsory to remove houses or buildings without the previous approval of the Governor in Council, and unless such removal can be effected without involving a heavy expense.

**44.** The paths appropriated for the use of foot passengers on each side of Water street and Duckworth street shall not exceed ten feet in width, and shall be covered with wood or stone along the front of each house or building abutting on the said street, the cost of said pavement to be paid by the owner of the land on which the said house or building stands; except that the tenant-owners of the house or building shall pay the cost of such pavement in the case of all houses or buildings erected under building leases on said street after the passing of this chapter, which leases are for terms of seventy-five years or upwards, or are renewable, without increased rent, for that length of time from the commencement of the term. The subsequent cost of repairing or relaying said pavements, when they were laid by the Council or under the direction thereof, shall be paid by the Municipal Council.

**45.** The Council may, by resolution made and published in the *Royal Gazette*, suspend, or altogether dispense with the opening, making, widening or altering, any fire-break, street, or lane in this chapter mentioned, or any part of any such fire-break, street or lane, and prescribe the width of all such fire-breaks, streets and lanes in their several parts, and the same vary, and regulate the width of all new streets or lanes hereafter to be opened, and the level upon which all streets, lanes and fire-breaks shall be made; and also regulate, alter and adjust the levels and widths of all foot-paths and side-walks heretofore made or laid down, or which may hereafter be laid down.

**46.** Every party wall within the limits prescribed for the erection of buildings of stone, brick, or other uninflammable materials, shall project above and beyond the roof at least twelve inches; and no wood or inflammable material of any description, except doors, door-frames, window-sashes, window-frames and roof-boarding, shall be placed within four and a-half inches of the outside of the said building; and every chimney shall entend to a height not less than two feet above the ridge-pole.

**47** In case of dispute, the Council shall, upon the application in writing of any proprietor or tenant of any land within the said town desirous of building a party wall, summon before them the tenants or proprietors of the adjoining land, and thereupon, after hearing such parties as shall attend, make order as to the extent which the party-wall between the said parties shall occupy on the ground of each respectively, as to the

manner in which the same shall be built, and as to the proportion of the expense thereof to be paid by the said parties respectively.

**48**. Any person who shall neglect or refuse to comply with any order or direction made by the Council as aforesaid, shall be subject to a fine not exceeding twenty-five dollars; and the proportion of the cost of such wall to be paid as aforesaid, may be recovered in an action of assumpsit for work, labor and materials.

**49**. When any party shall be desirous of building on his own land, and shall, for the purpose of such building, use in any manner a wall already built by another party upon the adjoining land, the Council shall, upon the application of either the party so building or the party who shall have built as aforesaid, summon the said parties before them, and, after hearing such parties as may attend upon such summons, direct that the party building shall have the use of the said wall to the extent required by him upon paying such proportion of the original cost thereof as the Council shall deem just; which proportion may be recovered by the party entitled thereto in manner provided in the foregoing section. The Council may cause levels to be taken of the several streets, lanes and fire-breaks within the said town, by which levels all parties are required to govern themselves. All copings, parapets, cornices, or overhanging roofs, blocking courses, cornices, piers, columns, pilasters, entablatures, facias, door-facings and window-dressings, balconies at least ten feet above the level of the street, or other architectural improvements, may project beyond the general line of fronts in any street, lane or fire-break; provided, that within the limits prescribed for the erection of buildings of stone, brick, or other uninflammable materials, they be wholly composed of such uninflammable materials.

**50**. No person shall build, construct, erect, or excavate, or proceed in the commencement or completion of any house, building, fence or other erection, within the lines and boundaries by law defined and prescribed as and for the width of any road, street, cove or fire-break within the said town.

**51**. All buildings or erections which shall be erected or constructed in contravention of this chapter, or of any order made by the Council in pursuance of the provisions of this chapter, or which shall be in any manner commenced to be erected or constructed, and all such excavations, shall be public nuisances, and may be abated by any stipendiary Justice for the Central District, who shall upon complaint of the Chairman of the Council or other person, and after hearing the party complained of, or, in default of his appearance, upon being satisfied that such party had been duly summoned for that purpose, or that a summons for such purpose had been left in or upon the house, building, erection, or excavation complained of, make order for the abatement of such nuisance, and shall furnish such assistance of constables and others as may be necessary for that purpose;

and the person who has wilfully committed, or shall wilfully commit or continue any such nuisance, shall, on proof thereof in a summary way before such stipendiary Justice, be convicted and pay for every such offence a penalty not exceeding twenty-five dollars, to be levied with costs and expenses, including those of the removal of the nuisance, by warrant of distress of such Justice upon the goods and chattels of the defendant. This section shall not apply to buildings of brick or stone erected pursuant to the Act 9th and 10th Vic., Cap. 3.

**52.** A substantial ladder shall be fixed to the roof of every dwelling-house, and kept in good repair, except where a regular access to the roof from the inside is provided; and such ladder shall be provided by the proprietor of such dwelling-house. And every proprietor of a dwelling-house who shall make default herein shall, for every offence, forfeit and pay a fine of two dollars.

**53.** All door and window sills in any house or building which by law hath been or shall be required to be built of uninflammable materials, shall be of stone or other uninflammable materials; and every person who, since the first day of May, in the year one thousand eight hundred and forty-nine, has used, or caused to be used in any such building any door or window sill other than such as is herein directed, and shall not remove the same after one month's notice in writing from the Council, shall forfeit and pay for every such door or window sill a fine of four dollars, and shall cause every such door or window sill to be removed and replaced with a sill of stone or other uninflammable material within such time as shall be prescribed by the Council in any such case for that purpose under a penalty of ten dollars.

**54.** The Council may permit the erection of external wooden steps to stores and other buildings, where buildings of uninflammable materials are required to be erected: provided such steps are not upon any of the public streets, coves or lanes; and also of winter porches, between the first of November and the first of May, (in any of the streets other than Water street and the coves south thereof,) but this permission shall not apply to buildings erected after the month of January, 1892; and also of railings, entablatures and pilasters, and other erections of the like kind upon any of the streets and lanes, of such size and dimensions, and on such terms and subject to such regulations as the Council shall prescribe.

**55.** Whenever, by the making, altering, or widening any street, lane or fire-break, any portion of such street, lane or fire-break hath been or may hereafter be exchanged for other ground, the Council may grant such portion of such street, lane or fire-break to the party to whom the same hath been or may be assigned.

**56.** Where, by the alteration of any street, lane, or fire-break under any law heretofore made, any portion of ground not embraced within the

new line of such street, lane or fire-break shall be adjoining to or extending along the frontage of any proprietor, such portion of ground shall be set off to, and shall be taken by, such adjoining proprietor to the extent of his frontage, at a valuation to be ascertained by two arbitrators, one to be named by the proprietor and one by the Council (who shall not be a member thereof), and in case of disagreement, by a third arbitrator to be chosen by the two arbitrators; but should the said proprietor neglect to appoint such arbitrator after six days' notice to be given by the Council, or should such arbitrators refuse or neglect to concur in the appointment of a third arbitrator, the Supreme Court, or a Judge thereof, shall appoint an arbitrator, and the amount awarded by such arbitrators shall be deducted from the compensation now or hereafter to be payable to any such proprietor; and in case the compensation has been made, or no compensation shall be payable to him, such amount shall, in case of refusal to pay the same, (if the Council, upon hearing the proprietor or his agent, and upon consideration of the award and of all the circumstances of the case, shall think fit so to order), be levied by warrant of distress and the sale of the lands, goods, or chattels of such proprietor, to be issued by a stipendiary Justice for the Central District.

**57**. Section 51 of this chapter shall not be held to apply to an iron railing and a stone or brick porch now erected on the west side of Buchanan street, on the old line of road in front of the new Wesleyan Chapel lately erected on said street.

**58**. The Council shall prescribe and lay out a line of street on the south side of the harbor of St. John's to such point as may be determined upon, and shall define the extent, width and boundaries thereof, and shall cause to be made a correct plan of the said line of street, which plan shall be deposited and preserved in the Council's office, and shall, touching all questions of the extent, width and boundaries of such street, be conclusive evidence of the same.

**59**. The said line of street, when so defined and laid down, shall be subject to the approval of the Council, who may, by public notice, alter the dimensions and boundaries thereof as from time to time shall be expedient.

**60**. The said street, when so prescribed and laid down, shall be a public street, and the provisions of the preceding sections of this chapter shall extend to the same as to taking land and the mode of compensation for land taken for public purposes, trespasses, encroachments and legal procedure, the erection and situation of new buildings, notices to the Council, and the jurisdiction of Justices over offences, and in all other respects, as if specially set out and incorporated in this chapter.

**61**. On the said south side of the said street, to be called Harvey street, south side, there shall be not less than five fire-breaks of at least fifty feet in width respectively.

62. Whenever the repair or reconstruction of any house, building, or other erection within the limits prescribed for any street in the town of St. John's, or of any street prescribed under the authority of this chapter shall require an expenditure amounting to forty per cent. of the cost of erecting such house or building of the same character and dimensions anew, but not including in such cost the cost of making or erecting cellars and chimney; or whenever such house or building shall have been, by reason of exterior dilapidation, untenantable for a period of twelve months, then the repairing or reconstruction of such house or building shall be deemed to be the construction or erection of a new building within the meaning of this chapter.

### Supply of Water to Town.

63. Subject and except as by this chapter provided, the Council shall continue to have, possess, exercise, perform and discharge all and singular the functions, rights, powers, obligations and duties heretofore vested in or exercised, performed, or discharged by the directors of the General Water Company in relation to the supply of water to the town, and to the possession, control and management of the works and property in connection therewith.

64. It shall be the duty of the Council to continue efficiently to control and manage the supply of water to the town from Windsor Lake, in the streets, and within the limits in and within which pipes have been already laid by the General Water Company and the Council, and in such further streets and within such further limits in and to which the supply may hereafter be extended and pipes laid, and to erect in such places within the said limits, as the Council may determine, fountains for the supply of water and to establish hydrants throughout the town, as the Council may think necessary.

65. For the purpose of laying the said pipes and mains through the said streets, or any branch or service pipes, or for any future extension of the said water supply, or for the purpose of effecting any examination, alteration, repairs, or cleansing of the said pipes and mains, or service pipes, or otherwise carrying out or maintaining the said water supply and works, it shall be lawful for the Council to dig, break and trench the streets and squares, public places and lands in and near the town of St. John's as may be necessary, observing all proper precautions for the safety and convenience of the public; and for the purposes of this chapter, from time to time, after three days' notice in writing to the owner in that behalf, to be signed by the Chairman or Secretary of the Council, to enter upon, excavate, trench, possess and hold as the property of the Council, the lands of private parties in or near the said town.

66. Should any person whose land shall have been so entered upon, excavated, or taken as aforesaid, require compensation for any injury sus-

tained by him by any act of the Council, or their agents or servants, or for any portion of his lands, tenements, or premises appropriated or used by the Council under the foregoing section, such claim shall be determined by arbitration.

**67.** The cost of repairs to service pipes shall be borne by the consumers by whom such pipes shall be used.

**68.** It shall be lawful for the Council, at its cost, with or without the consent of the occupier or proprietor, to introduce branch or service pipes into any building subject to the rate of assessment.

**69.** Any person authorized by the Council in writing for that purpose, shall have free access, between the hours of eleven in the morning and four in the afternoon, to all parts of every building in which water is delivered and consumed.

**70.** Every cistern, or other receptacle for water, and every closet, soil-pan and bath, which shall be supplied with water by the Council, shall be so constructed and used as effectually to prevent the waste, misuse, or undue consumption of water, and the flow or return of foul air or other noisome or impure matter, into the mains or pipes of the Council, or into any pipes connected or communicating therewith, and the Council shall not be bound to supply water into any cistern, or other receptacle for water closet, soil-pan, or bath, which shall not be so constructed.

**71.** If any person shall in any way obtain, or use the water of the Council without consent of its proper officers, or shall wrongfully waste the same, such offender shall forfeit a sum not exceeding twenty dollars: Provided that this section shall not extend to parties taking water from the public pumps hereinafter mentioned, nor to any use of the said water in case of fire occurring in the said town.

**72.** If any person shall wilfully or maliciously hinder or interrupt, or cause or procure to be hindered or interrupted, the contractors, servants, agents, or workmen of the Council, in the exercise of any of the powers and authorities within this part of this chapter authorized and contained, or if any person shall wilfully or maliciously put out of order, injure or destroy any pipe, work, or material of the Council, such offender, on conviction in a summary manner before a Justice of the Peace, shall forfeit a sum not exceeding twenty dollars, with costs of suit, and shall pay, upon the order of such Justice, all damage so occasioned by him, and, in default of such payment, shall be imprisoned for a period not exceeding three calendar months; and it shall be lawful for any person who may witness the commission of such offence to apprehend without warrant, and for any other person to assist in apprehending such offender, and to convey him before a Justice, to be dealt with in the manner aforesaid.

**73**. If any person, supplied with water by the Council, wrongfully does, or causes, or permits to be done, anything in contravention of any of the provisions of this chapter or any regulations made thereunder, or wrongfully fails to do anything which under this chapter or any such regulations ought to be done for the prevention of waste, misuse, undue consumption, or contamination of the water, the Council may, without prejudice to any other remedy against him in respect thereof, cut off any of the pipes by or through which water is supplied by them to him or for his use, and may cease to supply him with water so long as the cause of injury remains or is not remedied.

**74**. The Council shall have possession and control of Windsor Lake and of the Crown lands surrounding and adjoining the said lake to the extent of three hundred yards from the margin thereof. For the purpose of preventing the pollution of the waters of the lake and obstructions to the outflow thereof, and the preservation of the water-works, the Council shall have power from time to time to make such regulations and bye-laws prohibiting the making, depositing, or keeping of noxious, deleterious, or offensive, articles or substances on the land near to or adjoining the lake, or the carrying on of any business or operations likely to occasion the pollution of the water or obstruction to the flow of water or injury to the water-works, and to fix penalties for the breach of such rules, regulations or bye-laws.

**75**. The Council shall also have power, if considered necessary for the purposes mentioned in the preceding section, to appropriate private property to the extent of three hundred yards from the margin of said lake; such land to become Crown property and to be under the control and in the possession of the Council as provided by the preceding section. The compensation to be paid to the proprietors of such land shall be determined by arbitration.

### Roads, Streets, Bridges and Highways.

**76**. Within the city limits, and except as otherwise herein provided, the Council shall continue to have, possess, exercise, perform and discharge all and singular the functions, powers, rights, obligations and duties which under any act or law in force have been or are vested in, or exercised, performed or discharged by the Council or by the Board of Works, in and upon and in relation to—

(*a*.) The making, constructing, maintaining, or improving of roads, streets, bridges, lanes, highways, fire-breaks, or thoroughfares;

(*b*.) The removal of obstructions from the public streets, lanes, and thoroughfares, and the prevention and abatement of nuisances;

(*c*.) The lighting of the town.

**77.** Except as herein otherwise provided, the Chairman of the Council shall, in relation to all the matters enumerated in the foregoing section, and within the said city limits, have, perform, exercise, and discharge all the functions, powers, rights, obligations and duties which, by any law in force, are vested in or conferred or imposed upon the Chairman of any local Road Board or the Chairman of the Board of Works, in relation to the same matters within the limits over which they generally have control.

**78.** Wherever it shall become necessary for the opening, making, or widening, of any road, street or other work to appropriate any piece or parcel of land, being private property, the Council shall pay out of such moneys as shall be at their disposal for the purpose of making such roads, streets or other work, a fair and reasonable compensation to every person having any interest in the land so intended to be appropriated, and also to compensate any person for any damage which may be occasioned to his property by the making, opening or widening of such road, street, or other work; and if the Council and the party so entitled to compensation cannot agree as to the amount to be paid therefor, the same shall be determined by arbitration.

### Sewerage of the Town and Sanitary Regulations.

**79.** Within the city limits, and subject and except as herein provided, the Council, shall continue to have, possess, exercise, perform and discharge all and singular the functions, powers, rights, obligations and duties which under any act or law have been or are vested in or exercised, or performed, or discharged by the Council, the General Water Company, or the directors thereof, or the Board of Works in, upon and in relation to—

(*a.*) The sewerage of the town; the constructing, maintaining, repairing, opening or altering of sewers, drains, gratings; the devising or carrying out of any plan or scheme of sewerage for the town, and control, management and direction of all works in connection therewith;

(*b.*) Cleansing of the town, and all matters pertaining to the sanitary condition thereof.

**80.** It shall from time to time and at all times be lawful for the Council to open and construct throughout the said town and the several lanes, places and streets thereof, such and so many drains and sewers as may be necessary for the efficient drainage and sewerage of the same.

**81.** It shall not be lawful for any person to build or erect, or finish, within the limits of the town, any house or building designed for a dwelling-house, unless such person shall, during the building or erection or finishing of such house or building, or immediately thereafter, and before it shall be used as a dwelling-house, make or construct one or more

sufficient pipe drains or sewers of imperishable materials, and of a size to be specified by the city engineer, leading from such house or building or from any yard (if any) belonging to the same to and into some public drain or sewer within the said town: Provided there be such a drain or sewer within fifty feet of such building.

**82.** Should any person build, or erect, or finish any house or building designed and within the limits aforesaid, without making and constructing within the time aforesaid one or more drains or sewers leading and constructed as aforesaid, such person shall be subject to a penalty not exceeding twenty-dollars; and it shall be lawful for the Council, after ten days' notice in writing to such offender, to enter into and upon the said house, building, or yard, as the case may be, and there to make and construct one or more sufficient drains or sewers leading as aforesaid, and the cost of such drains or sewers shall be paid by such offender.

**83.** Such penalty as aforesaid, and the cost of such drains or sewers when made or constructed by the Council shall be recovered by an action or actions at the suit of the Chairman of the Council for the time being, before the Central District Court, and shall, with costs, be levied upon the offender's property by warrant of distress; and the proceeds of such fine shall be applied to the cost of the general sewerage of the town of Saint John's.

**84.** Every proprietor of every such house or building as aforesaid, who shall himself make and construct any such drain or sewer aforesaid, shall, before proceeding with the same, give two days' notice to the Council of his intention in that behalf; and such construction shall be subject to the supervision and control of the Council in order that it may be effectual for the purpose for which it is designed, and may not in any way damage or interfere with the construction or flow of main drains.

**85.** The engineer, foreman, or other servants or agents of the Council duly authorized thereto in writing by the Council, may enter upon any Crown lands, or upon the lands of any corporation or persons whatsoever, and into all houses, buildings, tenements and erections upon such lands, whenever it may become necessary for the purpose of making surveys or examinations, or of obtaining necessary information relative to the construction, alteration, repairing, maintenance or inspection of sewerage, drainage, or any other works of which under this chapter the Council may be empowered to undertake or assume control for the purpose of carrying into effect the provisions of the same.

**86.** The Council, their engineers, officers, and foremen, servants and laborers, shall have the right to enter upon any Crown lands, or upon the lands of any corporation or persons whatsoever, and into all houses, buildings, tenements and erections thereon, whenever it may become necessary for the purpose of carrying into effect the work and system of sewerage,

drainage and cleansing hereinbefore authorized, or for the making, constructing or laying down of private drains or sewers to connect with the main sewers or general system of drainage, and to break up, dig, excavate and open so much and so many of the public streets or thoroughfares or private property or other places as may be necessary for fully and efficiently carrying into effect the said work and system, and to pass and repass into, over and upon such streets, thoroughfares, lands, tenements, buildings and premises, and to convey material over, through, or upon the same, and to make, construct and lay down pipes, drains, gratings, or other necessary works in and upon the same, and from time to time to remove, alter or change the same.

**87**. The Council may enter upon Crown lands or the lands of any corporation or person for the purposes of necessary rights of way across, over and under such lands, and may enter upon, take and hold any of the said lands whenever the same shall be required for the purpose of constructing, altering, repairing, maintaining or inspecting any sewer, drain, street, building or work of any kind that may be undertaken by the Council or that may become the property of the Council, or that may be or become subject to the Council.

**88**. The Council shall have the power to alter or divert any natural water-course, after having given three months' notice in writing to the owners, lessees, or occupiers of land bordering on such stream, of their intention of making such alteration within the limits of the town of Saint John's for the improvement of such water-course or of the sewerage of the town, and may remove impure or offensive soil therefrom, lay pipes, construct drains, grade surrounding land, change the direction of or fill up the said water-course, as may be deemed by the Council necessary or expedient; and the Council shall have power to enter upon all lands within the limits aforesaid, to dig and excavate upon such lands, and to go under all buildings that may be erected thereon, and may require the owner or occupier of all buildings and erections upon the said lands to make alterations in the walls, cellars, and other portions of the said buildings and erections as may be necessary for the purposes of this chapter.

**89**. All claims for damage that may be occasioned to any person whose interests may be in any way injuriously affected by the taking of lands or tenements, or of any water-course, or by the diversion of any water-course, or by the removal or alteration of any house or other building, or by the taking of any right of way over, under, or through any land, or by digging or excavating upon any land, or any damage of any kind that may be occasioned to any interested person by reason of the provisions of this chapter, shall be determined and assessed by arbitration.

**90**. It shall be lawful for the Council to appoint an officer to be called the "Municipal Supervisor of the Town of St. John's," whose duty it shall be to oversee the carrying out of the provisions of this part of this

chapter and all laws now or hereafter to be made having reference to the sanitary condition of St. John's, or the abatement of nuisances therein.

**91.** The Council may appoint officers to be termed "Municipal Inspectors," whose duties it shall be to assist the Municipal Supervisor in the discharge of his duties, to obey his lawful orders, and generally to carry out all laws and regulations having reference to the sanitary condition of St. John's or the abatement of nuisances therein.

**92.** The Municipal Supervisor, or under his written authority any inspector appointed by virtue of this chapter, may at any hour of the day between ten a.m. and four p m., enter any house or tenement where such supervisor may have reason to suspect the existence of any nuisance, or that any breach of this chapter, or the regulations of the Council made hereunder has taken place; and such supervisor may thereupon make such orders and directions as may seem expedient for the abatement of any nuisance in such house or tenement existing or for the more effectually carrying out the purposes of this chapter and all regulations as aforesaid made hereunder.

**93.** Any person obstructing or in any wise interfering with the supervisor or any inspector in the discharge of his duty under this part of this chapter, or any person refusing or neglecting to comply with the lawful and reasonable orders and directions of such supervisor or inspector shall be liable to a penalty not exceeding forty dollars, and in default of payment of such penalty, with all reasonable costs, shall be liable to imprisonment for any period not exceeding one month.

**94.** In or appurtenant to every house within the town of St. John's which is or shall be rented for the annual sum of one hundred dollars and upwards, or which is or shall be appraised in the books of the Council at such annual value, there shall be constructed a proper and sufficient water-closet, earth-closet, or such like convenience, subject to the approval of the Municipal supervisor or city engineer, who shall decide as to the sufficiency of the same, for the construction and maintenance of which the proprietor of the building shall be primarily liable. When it shall have been brought to the knowledge of such supervisor that any such house as aforesaid is destitute of such water-closet, earth-closet, or convenience as aforesaid, he shall thereupon serve, or cause to be served, upon the ground landlord, owner, or occupant thereof, or of any part thereof, which occupant, for the purposes of this chapter shall be construed to be the agent of said proprietor of the building, notice in writing requiring the construction within one month of a suitable and sufficient water-closet, earth-closet, or such like convenience, and if, at the expiration of the time mentioned in such notice, no such convenience shall have been constructed upon the said premises it shall be lawful for the said Municipal supervisor with workmen and others, to enter upon the premises and to cause such convenience to be constructed, and such supervisor may prosecute and sue the said

proprietor of the building for all charges and disbursement attendant upon the construction of such convenience as aforesaid, and, upon proof of such notice and refusal, shall be entitled to recover all such charges and disbursements together with costs of suit; and, for the purposes of such prosecution, any occupant of any premises shall be deemed to be the agent of the defendant, and the property of defendant in the premises concerned shall be liable for the amount of judgment and costs in such prosecution; and it shall be the duty of the occupant, upon receipt of any notice, immediately to give notice thereof to the said proprietor: Provided that nothing herein shall affect the rights of landlords and tenants *inter se.*

**95**. In order more accurately to define the duties of the said Municipal supervisor, it is hereby declared that his functions shall extend, within the town of St. John's, to the abatement of all nuisances at common law, having reference not only to sanitary matters, but also to the obstruction of highways, public rights of way, and violations of the statute law in reference to the construction of buildings and erections in the town of St. John's.

**96**. The Council may appoint one or more person or persons to be known as impounders, whose duty it shall be to seize and impound any horse, oxen, goats, swine, or other domestic animals which may be found straying or at large within the town of St. John's. It shall always be the duty of such impounder to seize and impound, or destroy all dogs unlawfully at large without the owner or other person in charge thereof.

**97**. No female dog, whether licensed or otherwise, shall be permitted to be at large within the town of St. John's without her owner or other person in charge thereof, under a penalty, to be recovered against the owner thereof, not exceeding the sum of five dollars. Should it be impossible to discover the owner thereof, or should such owner neglect or refuse to pay such fine, it shall be the duty of the impounder to destroy such dog found as aforesaid.

**98**. In any case where, under this part of this chapter, no specific penalty is affixed to any offence, the offender shall be liable to a penalty not exceeding fifty dollars.

**99**. Penalties incurred under this part of this chapter shall be held to be cumulative upon any other penalties recoverable or other remedies available under any existing law.

### Bannerman and Victoria Parks.

**100**. All that parcel of land containing about twelve acres shewn and described in a plan thereof deposited in the office of the Surveyor General, and situate in the rear of the town of St. John's, bounded south by the Military road, three hundred and sixty-one feet, more or less, and by the grounds of the Colonial Building, one hundred and ninety feet, more or

less; east by the said grounds of the Colonial Building, three hundred and seven feet, more or less, and by Bannerman road, seven hundred and thirteen feet, more or less; north by the Circular road, four hundred and fifty-eight feet, more or less; and west by the property of Calver and others, thirteen hundred and two feet, more or less, and all such adjoining lands as may at any time be procured by the Government or the Council for that purpose shall be vested in Her Majesty and set apart dedicated and appropriated for the sole use and purpose of a public park for the use and accommodation of the inhabitants of St. John's and all others resorting to the said town.

**101.** The said park shall continue to be named and known as Bannerman Park, and shall be under the control and supervision of the Council, in whose possession the same shall be held to be.

**102.** In consideration of that lot of land, the private property of the Governor and situate on the south side of the Circular road aforesaid, and containing about ten acres, having been added to the said park lands, there shall be paid to the Governor on the first day of January in each year thereafter the sum of eighty dollars, as the estimated annual value of the same; such annual payments to be a charge on the rents of Crown lands hereinafter vested in the Council.

**103.** That piece or parcel of land situate on the west end of the town upon which stood the building of the old hospital, which land was held under a grant from the Crown, dated the thirty-first day of December, A.D. 1831, issued under the authority of the Act 6th, Wm IV., Cap. 5, to certain trustees, for the purpose of a hospital and grounds, shall continue to be applied and appropriated for the purpose of a park or place of recreation for the public, to be called "Victoria Park," and shall be held by the Council for the said uses and purposes.

**104.** The Council may make rules for the regulation, use and management of the said parks, for the preservation of the fences and other public property appertaining to the same, and for the maintenance of order and propriety therein; and such rules shall be published by being printed and hung up in the said parks, and a violation of any such rules or orders shall subject the offender to expulsion and removal from the said park by the Council or any one acting under their authority, or by a peace officer, and to a fine not exceeding five dollars in addition to the cost of repairing any damage or injury caused to the said park or to the fences or other public property appertaining to the park by such offender, to be recovered, with costs, in a summary manner before a stipendiary Justice, by a suit to be brought in the name of the Chairman of the Council; and every such offender who shall not, upon adjudication, pay such fine, may be imprisoned for any time not exceeding fourteen days.

### The Fire Brigade.

**105.** The Council shall continue to maintain a Volunteer Fire Brigade, to consist of two or more companies, each company to be composed

of as many men as the Council shall determine, not to exceed fifty, exclusive of officers The officers of each company shall be a captain, two lieutenants, and a secretary; each company may elect its own officers, subject, however, to approval by the Council.

**106.** The brigade shall be under the control of a general superintendent to be appointed by the Council.

**107.** The said brigade shall be governed by rules to be from time to time prescribed by the Council, which rules shall be published in the *Royal Gazette.*

**108.** The members of the Council, the superintendent of the brigade, the inspector of police, the captains of the companies and the engineer of the Council shall be the fire wardens for St. John's, with such rules of precedence as may be determined by the Council.

**109.** Upon the occasion of a fire occurring within the said town, the senior warden present, with the aid and assistance of his co-wardens, shall control and manage the said brigade and the water of the said Council and all means available for staying the progress of such fire; and all persons present thereat shall obey the reasonable orders of such senior warden and his assistants in that behalf, and any person refusing obedience to any such order shall be subject to a fine not exceeding four dollars, to be recovered in a summary manner before any stipendiary Justice, and any one wilfully hindering or obstructing the said senior warden or his assistants, or any one acting under them in their proceedings, shall be subject to a fine not exceeding twenty dollars, to be recovered as aforesaid, and may be arrested by any person present and confined in gaol, until he can be brought before a Justice for adjudication and punishment: Provided that in the absence of the captain of either of the said companies when such companies shall be called out, the next in command of such company shall for the time being be and act as a warden in the place of such captain.

**110.** Any person convicted under the preceding section and refusing on such conviction to pay the fine imposed upon him may be imprisoned by the Justice by whom he shall be convicted for any period not exceeding one month when convicted for any such obstruction as aforesaid, and not exceeding one week when convicted of refusing to obey the reasonable order of the said senior warden.

**111.** A majority of the wardens present at any fire, if they shall consider such proceeding necessary to stay the progress of the fire but not otherwise, may pull down or remove any building or any part thereof.

**112.** Any person sustaining loss or injury by such pulling down or removal which he probably would not have suffered by the spread of such

fire shall be compensated for the same from the funds of the said Council, and for the purpose of ascertaining the right of any claimant, as well as of determining the amount of damage, if any, sustained by him, the Council shall appoint one arbitrator and the party claiming shall appoint another; the arbitrators thus appointed shall, if necessary, appoint a third, and the decision of any two of such arbitrators shall be final and binding upon all parties: Provided that, should the two arbitrators first mentioned not agree in the choice of a third arbitrator, the Supreme Court, upon the application of either party, shall appoint a third arbitrator.

**113**. The Council may annually appropriate a sum of three thousand five hundred dollars for salary of a superintendent and the necessary expenses of the brigade, and also to aid in providing the said brigade with suitable clothing and to establish a fund for relief in case of accident happening to any member of the said brigade when on duty, under such rules as may be prescribed by the Council.

**114**. The agent or representative of every fire insurance company doing business in the town of St. John's shall, on or before the thirtieth day of January in every year, make affidavit before one of the stipendiary Magistrates of St. John's setting forth the amount actually received by the said company during the year ending on the thirty-first day of December next preceding for premiums of insurances against fire on property situated within the town limits, which affidavit shall be deposited with the Council, unless on or before the said thirtieth day of January in every year one-sixth of the appropriation mentioned in the 113th section be paid by the said insurance companies to the said Council.

**115**. The Council shall assess upon the sum total of such premiums an amount equal to one-sixth of the appropriation mentioned in section 113 of this chapter, and such amount shall be paid forthwith by the agents of the said companies to the Council; and the Council shall have power to recover the same in like manner as other assessments, unless the said one-sixth shall have been paid in accordance with the provisions of the next last preceding section.

**116**. The fire wardens and members of the fire brigade established under this chapter shall be exempt from serving on all juries.

**117**. Any person who shall wilfully and knowingly give or occasion a false alarm of fire shall, upon conviction of such offence before a stipendiary Magistrate in a summary manner, be liable to a fine not exceeding twenty-five dollars, or to imprisonment for any time not exceeding one week.

### Taxes and Sources of Income.

**118**. The several rates, assessments, taxes, imposts, duties, rents, appropriations and other sources of income which at the time of the passing

of this chapter are or shall be in force and payable to the Council, or from which the funds and income of the Council are derived, shall continue to be in force and to be levied, collected and recovered, unless and until the same are or shall be repealed, altered or otherwise affected by or under the operation of the provisions of this chapter.

**119.** For the purpose of providing funds to meet the annual expenditure necessary for carrying into effect the provisions of this chapter, the Council shall have the power to levy, raise, collect and receive the several rates, assessments, taxes, rents, fees, appropriations and other moneys hereinafter provided.

**120.** There shall be paid by the owners and occupants respectively of all houses and other buildings along which the pipes of the Council shall or may have been laid, and within three hundred yards of such pipes, certain annual rates and assessments of so much per cent., to be fixed, established, and imposed by the authority hereinafter mentioned, upon—first, the annual ground rents of all houses and other buildings aforesaid erected on ground-leases, to be paid by the owners of the said rents, except as provided by section 145; secondly, in the case of buildings subject to ground rent, upon the annual rent value of such houses and other buildings, less the ground rent payable thereon, to be paid by the tenant-owners of the house and other buildings, and termed "lessee's tax;" thirdly, on freehold houses or other buildings built on land the property of the owners of the houses or other buildings, in which case the rent value of the land shall be included in and with the rent of the house or other buildings, to be paid by the owners of the property, and be termed the "freehold tax;" fourthly, the "occupier's tax," to be charged upon the annual rent value of all such houses and buildings into or along which pipes shall have been laid, and which shall be of the annual value of forty dollars, to be paid by the occupants of such houses and buildings respectively, whether using water or not; provided that the payment of either of the said rates or assessments shall not exempt the party so paying from liability for one or both of the said other rates or assessments, if in other respects liable for the same. The taxes and assessments provided for by this section may be and are hereinafter called and described as water rates, taxes, or assessments.

**121.** For the purpose of providing a basis and means by which to fix, establish and impose such rates and assessments, it shall be lawful for the Council to appoint one or more appraisers, who shall be sworn before a Justice of the Peace faithfully to discharge the duties of their office; and a collector, who shall give sufficient security to the like effect; and such appraisers shall appraise, determine, and return, before the first day of October in every third year, the amounts and value of all such rents and interests aforesaid, and the annual rent value of all such houses or buildings into or along which pipes shall have been laid as aforesaid, and they shall deposit the books of such appraisement, when complete, with the

Secretary of the Municipal Council. The books of appraisement shall be open to the inspection of the public at the Council's offices during the month of November following.

**122.** Such books shall be opened to the examination of all persons desirous of inspecting the same; and any such persons may, within one month after such deposit, by a notice in writing to be filed with the Secretary of the Council and served upon the appraisers, object to any appraisement therein in which they may be or may expect to be interested; but the neglect to file such notice shall not debar any one from the right of objecting at the Court of revision hereinafter provided.

**123.** Upon the expiration of one calendar month after such books shall have been deposited, the Governor in Council shall appoint one or more qualified persons to be a court of revision, which court shall, for one calendar month then next following, at such hours as they may notify by advertisement in the *Royal Gazette* and two other newspapers, hold a court for the revision of such appraisement, and shall hear and determine all objections as aforesaid, and amend or confirm said appraisement accordingly; and after the expiration of the period fixed for holding such a court the said appraisement shall, for the purposes thereof, except as hereinafter provided as to appeal, be final and binding upon all persons whomsoever, for the three years next following the making and revision thereof.

**124.** Any party who may feel aggrieved by the decision of the said court in respect of any such appraisement, shall have the right to appeal therefrom to the Supreme Court or a Judge thereof, upon giving notice within four days after such decision of his intention to appeal, and upon paying into Court such a sum as may be sufficient to defray the costs of such appeal, and upon making and filing an affidavit setting forth the grounds of his appeal.

**125.** The appraisements made in the month of October in the year 1891, shall continue to be in force and binding upon all parties until the next general appraisement, and the triennial periods of appraisement provided for by this section shall be computed from that date.

**126.** It shall be lawful for the Council from time to time, as they may find necessary, to fix, establish, and impose annual rates and assessments of so much per cent. upon all such rents, interests, and rent-values aforesaid, to be paid by the parties hereinbefore made liable in that behalf, and in addition to any general rates and assessments; but, subject as aforesaid, to fix, establish and impose further additional rates upon such occupants as aforesaid where an unusual quantity of water may be taken by them for trading, manufacturing, or other special purposes.

**127.** For the purposes of this chapter, the introduction of one service pipe from the Council's mains into any one building, or two or more

buildings held in one and the same occupancy, and whether one or more of such buildings shall be joined or disconnected (provided no holding of a second occupant intervene between such disconnected buildings), shall be sufficient to render the occupier liable for the occupier's rate upon all such buildings.

**128**. Government buildings, churches, public school-houses, and buildings belonging to charitable bodies, shall not be subject to any rate or assessment whatsoever, but Government buildings shall pay such reasonable sum for protection and water as the Council may determine.

**129**. Property under mortgage shall be appraised as if such property were unencumbered, and the assessment thereon shall be paid by the mortgagor.

**130**. In estimating the rent value of any houses or buildings, the situation and other conditions thereof, as for example, the fact of house or building being waterside or eligible as a place of business, and such like, and also the quantity and value of trade stock from time to time contained therein, and protected by the water, shall be taken into account by the appraiser.

**131**. It shall be lawful for the Council, in the interval between the said triennial appraisements, to cause special appraisements to be made of the annual value of or in any house or building newly erected within the town limits, or then recently supplied with service pipes, or then recently arising by expiry of lease or otherwise. In every such case of special appraisement, notice thereof, and of the amount of the appraised rent, interest, or value shall be given to the parties whose rent, interest or value has been appraised, or, if absent from the colony, their resident agents; and, after the expiration of ten days from such notice, such person or persons as the Governor in Council may appoint therefor shall hold a court of revision for the purpose of revising such appraisement, at a time and place of which not less than ten days' notice shall be given in writing to all parties affected by such appraisement and assessment thereunder, and the said appraisement, as revised by such court, shall, for the purposes thereof, be final and binding upon all persons whomsoever until the next general triennial appraisement, subject to the right of appeal provided by section 124: and the rents, interests, and rent-values so appraised shall be and become liable to the general rates and assessments then in force under the resolution of the Council next preceding any such appraisement, which rates and assessments shall be due and payable at the times and in the manner prescribed by this chapter in respect of other rates and assessments, and the first payment shall become due on the first day of January or July next following any such appraisement and revision.

**132**. In any case in which, under any triennial or special appraisement, the rent or rent-value of any building shall have been appraised

upon which building at the time of which appraisement the occupier's rate or assessment shall not be payable by reason of no service pipe having been supplied to the building, or for any other cause, and thereafter at any time, by the supply of such service pipe or otherwise, the said building shall become liable to the occupier's rate or assessment, the rent or rent-value fixed and appraised in respect of the landlord's and owner's interests shall be held to be the rent or rent-value for the purposes of the occupier's rate or assessment, and the said rate or assessment shall thereupon come into force and take effect in the same manner as if the occupier's rent or rent-value had been fixed and appraised in the ordinary manner provided by the 120th section.

**133**. In addition to the water rates and assessments provided by the foregoing sections, it shall be competent for the Council to fix and impose a tax, rate, or assessment, which may be called and described as a sewerage rate or tax, to be levied and imposed upon and paid by the same parties and in respect of the same properties and interests therein as are, and shall be, respectively liable to the said water rates and assessments. The said sewerage rate or tax may be either at a specific annual rate or assessment of so much per cent. upon the annual rents, interests, and rent-values of the properties assessed, or by way of a proportionate addition to the water rates and assessments.

**134**. To remove doubts, all rates and assessments heretofore imposed, collected and received by the Council are hereby declared to have been legally imposed, collected and received, and the tax, rate, or assessment known as a sewerage rate or assessment, being an addition of one-fifth to the water rates and assessments, is hereby declared to have been, and shall hereafter be, in force and valid; provided that this section shall not be held to apply to the increase of the said sewerage rate from one-fifth to one-third attempted to be imposed in the year 1891.

**135**. There shall be paid by the owners of all land upon which no buildings or erections are constructed, along which land the pipes of the Council and sewerage pipes shall or may have been laid, within three hundred yards of such pipes and within the limits of the town, (except such land be used for agricultural purposes or appurtenant to a messuage or dwelling house), certain annual rates and assessments of so much per cent, to be fixed established, and imposed by the authority hereinafter mentioned, to be paid by the owners of such land; and the said rate and assessment may be called and described as the vacant land tax or rate.

**136**. For the purpose of providing a basis and means by which to fix, establish and impose such rates and assessments, the appraisers appointed to determine the value of houses and buildings for purposes of assessment under this chapter shall appraise, determine, and return, before the first day of October in every third year, the annual rent-value of the freehold or leasehold interests of the proprietors of such lands in the last section

mentioned, and such appraisement shall be entered in the books of appraisements, and the same deposited, when complete, with the Clerk of the Peace for the Central District.

**137**. Such proceedings as to the examination of said books, as to notice of objection, and as to courts of revision as are provided by the 121st, 122nd, 123rd and 124th sections of this chapter, shall be had and apply with regard to appraisements made under the two preceding sections.

**138**. It shall be lawful for the Council from time to time, as they may find necessary, to fix, establish, and impose annual rates and assessments of so much per cent. upon the annual rent-value of the freehold or leasehold interest of proprietors of such land as aforesaid, to be paid by the parties hereinbefore made liable in that behalf: provided that the Council may remit the rates and assessments imposed upon the owners of land by virtue of this section, from the time when such land so theretofore subject to such rates and assessments shall be built upon, or otherwise become used, to be made appurtenat to a messuage or dwelling house, in accordance with the exception contained in section 135 of this chapter: provided that from the date of such remission the said lands and buildings thereon shall be subject to appraisement and assessment for water and sewerage rates.

**139**. The Council may alter and change the rates and assessments imposed under the 138th section of this chapter, from time to time, as may be deemed expedient.

**140**. No land shall be deemed to come under the exception referred to in the 135th section of this chapter, unless, in addition to the other provisions therein mentioned, the said land shall be securely and substantially fenced, nor, if there shall be a cellar or excavation on the said land near to or adjoining any street or lane, unless a good substantial retaining wall be erected so as to prevent any possible breaking in of such street or lane by reason of such cellar or excavation.

**141**. It shall be competent for the Council from time to time to fix and impose a rate or assessment (to be called a property tax or rate), upon any lands or buildings, or the owners or occupiers thereof, within the limits of the town not subject to water, sewerage, or vacant land taxes or rates under this chapter. Such rate or assessment shall be at the rate of so much per cent., as the Council may determine, upon the rents upon which water rates would be assessed under section 120 if the property were within the limits therein specified.

**142**. For the purposes of such property tax or rate it shall be competent for the Council to cause appraisements to be made of all the property liable to such rate or assessment, which appraisements shall be

made at the same triennial periods and by the same appraisers, and subject to the same provisions in relation to revision and confirmation as hereinbefore provided in relation to water and sewerage rates. A special appraisement may be made at any time before the time appointed for the next triennial appraisement, and thereafter at any other time, which special appraisement shall be in force until the next ensuing triennial general appraisement, and the rates and assessments thereunder shall take effect in like manner and subject to the like conditions as are provided in relation to special appraisements for water rates under section 131.

**143.** All water rates, sewerage rates, vacant land taxes, and property taxes under this chapter, shall be payable half-yearly in advance, and shall become due on the first days of January and July in every year

**144.** All rates and assessments imposed under the foregoing provisions of this chapter upon others than tenants or occupiers of houses shall be a preferential charge upon the property by reason whereof such rates and assessments are imposed, to the extent of two years' rates and assessments, and shall be recoverable by sale of such property under execution in an action at the suit of the Chairman of the Council against the owner for the time being.

**145.** All assessments upon ground rents under this chapter shall be held to be landlord's taxes and shall be paid by the ground landlord, any provision in any future contract to the contrary notwithstanding, except in the cases of leases of seventy-five years and upwards, or leases renewable or renewed without increased rent for periods covering seventy-five years from the commencement of said term.

**146.** For greater facility in the imposition and collection of rates and assessments and in the transaction of the affairs of the Council, it shall be lawful for the Council to number and mark the houses and buildings within the limits of the town; and everyone convicted of altering or defacing any such numbers without lawful authority shall be subject to imprisonment for a term not exceeding one week, or to a fine not exceeding five dollars.

**147.** The following rates shall be paid by all vessels entering and clearing at the Custom House at the port of St. John's, and the proceeds paid over without any deduction to the Council, namely:—

(1.) By all vessels entering or clearing at the Custom House upon or from foreign voyages, a rate of five cents per ton on their register tonnage, to be paid at the time of such clearance.

(2.) By all vessels clearing at the Custom House for the sealing voyage, a rate of five cents per ton on their register tonnage, to be paid at the time of such clearance.

(3.) By all vessels engaged in coasting voyages or voyages to Labrador and owned by persons resident in St. John's, a rate of five cents per ton on their register tonnage, to be paid at their first entry or clearance at the Custom House in each year.

**148**. Such rates shall be paid at the times aforesaid, by the masters or owners of such vessels, and shall be collected and recovered in the same manner and by the like means as light dues are now collected and recovered in the said port: provided that such vessels shall not be compelled to pay water rates oftener than once in one year, nor to a greater amount, whatever their tonnage may be, than twenty dollars.

**149**. In consideration of the payments of such rates, every vessel paying the same shall be entitled to receive from the hose of the Council, at any wharf, within reach from the hydrant, at which such vessel may lie, a full supply of water upon each occasion of such payment without further charge; and the master shall also be at liberty upon all other occasions to take water from any of the public fountains.

**150**. There shall be annually paid by the Receiver General from the funds of the colony to the Council:—

(1.) The amount of duties collected upon all coals imported into St. John's, and the water rates upon shipping hereinbefore provided.

(2.) All rents from Crown property within the limits of the town.

(3.) Such sum as shall be appropriated annually by the Legislature out of the local appropriation for roads, streets, and bridges in the electoral districts of St. John's East and St. John's West, respectively.

(4.) The sum of eight thousand dollars from the general revenue of the colony towards the lighting and sanitary improvement of the town.

**151**. The Council shall have power, from time to time, to fix, impose, raise and collect the following taxes, rates and imposts, namely:—

(1.) An annual tax upon horses kept or used within the limits of the town for hire or private use.

(2.) An annual or special tax upon carriages, waggons, cabs, carts, sleighs, slides, catamarans, or other vehicles drawn by horses, mules, or donkeys within the limits of the town for hire or private use: provided that such tax upon any such vehicle for private use shall not entitle any person to ply the same for hire; but, to ply such vehicle for hire, the owner shall be re-

quired to pay the tax payable for vehicles when plying solely for hire.

(3.) A tax on pedlars, hawkers, and other such persons vending goods within the limits of the town.

(4.) An annual tax not exceeding one hundred dollars on every fire insurance company doing business or taking risks in the town of St. John's.

(5.) An annual tax not exceeding one hundred dollars on every marine insurance company doing business or taking risks in the town.

(6.) An annual tax not exceeding fifty dollars on every life, accident, or guarantee insurance company doing business or taking risks in the town.

(When any insurance company continues or carries on two or more branches or kinds of insurance, one tax only shall be levied upon such company, that is to say, a tax, the rate of which is the highest on the said branches or kinds of insurance respectively.)

(7.) An annual tax not exceeding five hundred dollars on every bank doing business in the city, with a paid-up capital of one million dollars or less; a tax not exceeding five hundred dollars on every such bank, the paid-up capital of which is more than one million but does not exceed two million dollars; and a tax not exceeding six hundred dollars on every such bank, the paid-up capital of which is above two million dollars.

(8.) An annual tax not to exceed four hundred dollars upon every gas company doing business in the town of St. John's.

(9.) An annual tax upon every electric telegraph, telephone, or electric light company, the maximum of which is fixed at four hundred dollars.

(10.) An annual tax not exceeding fifty dollars upon auctioneers transacting business within the city limits.

(11.) An annual tax or fee not exceeding ten dollars upon billiard tables used within the city limits, for playing upon or using which a charge or rate is paid to the proprietor, or to the club or association by which the same is kept.

(12.) A tax or rate not exceeding one cent per ton upon every steam-ship, or steam-boat, or steam-tug, entering the port of Saint John's, to be paid by the master or owner of such steam-ship not oftener than once in any one year—the year to be computed from the first day of January.

**152**. The said several taxes, rates and imposts shall, from time to time, be fixed and imposed, and may, from time to time, be altered or abolished by resolution of the Council to be published and authenticated as hereinafter provided.

**153**. For the purposes of annual taxes, the year shall commence on the first day of January and end on the thirty-first day of December, and the taxes shall be payable in advance on the first of January. The full amount of each annual tax shall be paid for the present year, and be payable at a date to be fixed by resolution of the Council.

**154**. In respect of cases in which the facts or conditions to which an annual tax applies shall commence or occur between the commencement and the end of any year as above defined, the Council shall have power, by resolution, rule, or regulation, to apportion the taxes and to fix the amount, or proportion thereof, which shall be paid in respect of the unexpired portion of the year.

**155**. In relation to the taxes provided for by section 151, it shall be lawful for the Council to issue to the party paying any such tax a license, in a form to be prescribed by the Council, permitting or authorizing the having, keeping, using, or carrying on of the animal, article, property, business, or employment, in respect of which the said tax is payable. It shall be lawful for the Council, by resolutions, rules, regulations or bye-laws, to regulate or prohibit the having, keeping, using, or carrying on of any such animal, article, property, business or employment without having first obtained such license, and to fix and impose penalties for the violation of any such resolution, rule, regulation, or bye-law, and for the breach of the terms or conditions of any such license.

### Application of Funds and Financial Affairs.

**156**. The moneys to be annually raised by and paid over to the Council shall be applied,—

(1.) To the payment of the interest upon the sum of six hundred and seven thousand dollars raised by loan under the authority of the Act 51st Vict., Cap. 5.

(2.) To the payment of the interest upon the sum of seventy-seven thousand two hundred and thirty dollars and ninety-six cents, raised by loan under the authority of the Act 53rd Vic., Cap. 3.

(3.) To the payment of the interest upon the sum of one hundred and forty-three thousands and one hundred and thirty-five dollars and six cents, raised by loan under the authority of the Act 54th Vic., Cap. 7.

(4.) To the payment of salaries or other compensation to the members, officers, clerks, and servants of the Council, and the

defraying of the necessary expenses incidental to the management of the business and affairs of the Council.

(5.) To the maintenance, improvement, and extension of the supply of water to the town and suburbs of St. John's, and the carrying out of the works necessary therefor.

(6.) To the maintenance, equipment and other necessary purposes of the St. John's Fire Brigade.

(7.) To the laying out, improvement, and protection, and maintenance of Bannerman and Victoria Parks.

(8.) To the lighting of the town.

(9.) To the construction, improvement, maintenance, and repairs of sewers, drains, and gratings; the construction, maintenance, and repairs of roads, streets and sidewalks; the cleansing of the town, and general sanitary purposes; and

(10.) Generally to the carrying out and performance of the work, duties, powers and functions authorized, prescribed and imposed by this chapter, and all necessary expenses incidental thereto.

**157**. The Council shall every year furnish to the Governor in Council full and detailed accounts of receipts from all sources and expenditures upon all services and purposes, which accounts shall be made up to the thirty-first day of December, and shall be furnished to the Governor in Council not later than the thirty-first day of January, and shall be laid before the Legislature at its next session. The Council shall also furnish, not later than the thirty-first of January, an estimate of proposed expenditures for the ensuing year, and a statement of the means proposed for raising the moneys necessary therefor, to be laid before the Legislature, which shall be published by the Council in at least two of the local newspapers. No proposed increase of water rate, sewerage rate, vacant land taxes, or property taxes, shall take effect until the first day of July then next ensuing. It shall be competent for the Legislature to alter or disallow any such proposed increase, and, in case such proposed increase shall not be disallowed by the Legislature, the same shall be of full force and effect.

**158**. The Council shall not have power to incur, enter upon or contract, or become liable for any expenditure or indebtedness beyond, or in excess of, the amount of its actual receipts or income, without the express sanction or authority of the Legislature.

### Rules, Regulations and Bye-Laws.

**159**. The Council may, from time to time, make such rules, regulations, and bye-laws, as may be deemed expedient or necessary, for any of the following purposes, viz.:—

(1.) For protecting the property of the Council and all portions thereof from trespass or injury.

(2.) For preventing the waste or misuse of water; and therein, amongst other things, to prescribe the size, description, strength, and location of the pipes, cocks, cisterns and other apparatus to be used.

(3.) For regulating in regard to drainage the plans, inclination and the materials of the pavement and road-way of public and private streets, and the plans and level of sites for buildings, and the levels of the bottoms of cellars and the lowest parts of buildings, and the drainage of streets into sewers.

(4.) For regulating the dimensions, form and mode of construction, and the materials and the keeping, cleaning and repairing of the pipes, drains, and other means of communicating with the sewers, and the fittings and apparatus connected therewith; for the emptying, cleansing, closing, filling up of sinks, cess-pools, and privies, and for such other works of cleansing and of removing and disposing of refuse as the said Council may be authorized to perform.

(5.) For prohibiting the use of any form of, or any mode of management of any baths, water-closets, soil-pans, sinks, cess-pits, wells, and other receptacles and fittings, the use of which may, in their judgment, tend to any fouling or contamination, or to endanger the public health.

(6.) To compel the occupant of any lot of land having stagnant or filthy water upon it, or that is dangerous to the public health, or the agent or proprietor of such lot, or any person having charge thereof in the absence of the proprietor, or in case the proprietor connot be found, to drain off such stagnant and filthy water, or to fill up or properly level off the said lot.

To provide that in case there be no person in the occupation of the said lot, and no one to represent the proprietor, or should such proprietor or other person in charge thereof, refuse or neglect to fence in, drain, cleanse, fill up or level the same, when so directed by the proper officer of the Council, or to be unable, for want of means, to drain, fill up, or level the said lot, it shall be competent for the Council to have the same done at the cost of the proprietor, and to acquire thereby a special mortgage on the lot for the amount so expended.

(7.) To compel the proprietor of any lot of land in the town to fence in or enclose the same.

(8.) To prohibit any person from depositing in the town any filth, dirt, or other offensive matter whatsoever, and to compel the

removal thereof by the owner or occupant of the premises on which the same may be, or from which the same may have come, and in default of his so doing to authorize the removal or destruction thereof by the proper officer, and to recover the cost of such removal or destruction from the party refusing or neglecting so to do.

(9.) To prohibit the raising, keeping, or feeding of pigs in the town, or in such sections thereof as the Council may determine.

(10.) To regulate the manner in which horned cattle shall be driven in the town and to order that the said cattle shall be conveyed in such streets and at such times only as may be determined by the Council.

(11.) To prohibit private slaughter-houses within the city limits, if deemed necessary in the interest of the public health.

(12.) To establish pounds for the impounding of horses, horned cattle, sheep, goats, and hogs which may be found astray, and to fix a tariff of fines and rates to be paid at such pounds.

(13.) To authorize the distraining and impounding of any cattle, horse, swine, sheep, or goat found at large in the streets or public places, and the sale of the same for the penalty and expenses.

(14.) To regulate all things concerning the streets, sidewalks, parks, squares, bridges, or drains in the town of St. John's, to protect the same from any encroachment or injury, to close and discontinue any street, if deemed advisable in the interest of the public.

(15.) To prevent the encumbering of and encroaching upon the streets and side-walks; to license or prohibit the sale or peddlery of any article or merchandize in the streets or public places.

(16.) To regulate the planting, rearing, and preserving of ornamental trees in the streets, squares and parks of the town of Saint John's.

(17.) To compel every occupant of a house or building to remove the snow and ice from the roof and footpath in front of such house or building, and every owner of a vacant lot to remove the snow from the side-walk in front of such lot.

(18.) To regulate the posting of bills and placards, to prevent the posting or exhibiting of indecent or offensive placards, paintings, drawings, statues or inscriptions in any street or public place, or in any store, or any place visible from such street or public place.

(19.) To regulate the placing of chutes, awnings, signs, or show-boards; to declare such chutes, awnings, signs, or show-boards, constructed or suspended contrary to the bye-law, to be public nuisances, and compel the owners thereof to abate the same.

(20.) To determine the direction of natural water-courses passing through private property, and to regulate all matters concerning the same, whether the said water-courses be covered or not.

(21.) To regulate the time when private drains shall be made, as also the manner and material with which the same shall be constructed, and to enact that such private drains may be made by the proprietor of such private drains under the supervision of the Council, or, in the event of refusal by any such proprietor, by the Council, from the line of the street to the common sewer, and through private property; and in such case the Council shall be empowered to assess the cost of the same on the proprietor of the property for the benefit of whom the said private drain is constructed.

(22.) To regulate the laying down of any railway track which may be authorized to be laid in the town; to regulate the use of locomotive engines, steam rollers, and street cars, and of the steam or any other motive power on any railway in the city; to prescribe and regulate the speed of the cars, and to impose a penalty not to exceed four hundred dollars upon the company managing any such railway, or any of their servants, for each and every violation of any such bye-law.

(23.) For regulating the conduct of officers, workmen and servants appointed, employed, or hired under and for the purposes of this chapter, and for the making, levying, and collecting of taxes, rates and assessments, and for providing for the due management and use in all respects of the property of the Council, and for carrying into effect the purposes of this chapter generally.

(24.) For fixing such reasonable penalties, not exceeding one hundred dollars or imprisonment not exceeding three months, for a breach of any rules, regulations or bye-laws made under the authority of this chapter, and not otherwise provided for therein; and, in case of continuing offences, a further penalty, not exceeding twenty dollars or imprisonment not exceeding ten days for every day after notice of such offence shall have been given by the Council to the offender.

**160.** All resolutions of the Council under which any tax, rate, or assessment is fixed, imposed, altered or abolished, and all rules, regulations,

and bye-laws made by the Council under the authority of this chapter, shall be published in the *Royal Gazette* and otherwise advertised as the Council shall deem expedient, and when so published in the *Royal Gazette* shall come into force and shall have the effect and operation of law as if they were specifically incorporated in this chapter.

**161.** The publication of any such resolution, rule, regulation, or bye-law, in the *Royal Gazette*, purporting to be certified under the hand of the Chairman or Secretary of the Council for the time being, shall be *prima facie* evidence of the adoption or making of such resolution, rule, regulation, or bye-law.

### The South Side.

**162** The Council shall have the control and management of roads, streets, and bridges on the South Side of St. John's, extending as far west as, but not including, Syme's Bridge, and shall expend upon the making, maintaining, and repairing of the said roads, streets, and bridges, such amounts as shall be annually appropriated out of any Legislative vote for the South Side.

### Arbitration.

**163.** In any case in which it is provided under this chapter that a claim against the Council for damages or compensation shall be determined by arbitration, the Council shall appoint one person, who shall not be a member of the Council, and the party preferring the claim shall appoint a second, and the Surveyor General shall be a third, which three persons, or any two of them, shall determine the amount of compensation, if any, to be paid to the party making such claim. In case either party shall refuse or neglect to appoint an arbitrator or arbitrators within seven days after notice in writing from the other so to do, it shall be lawful for the Supreme Court or a Judge thereof, upon the application of the other party, to appoint an arbitrator or arbitrators for the party neglecting or refusing to make such appointment, and such arbitrator or arbitrators, when so appointed, shall have the same power in all respects as if appointed by either party. And the said arbitrators may summon and require the attendance before them of all parties interested in the property or other subject matter of the claim, and all necessary witnesses, and require the production before them of all deeds and papers requisite to establish the title or interest of any party making a claim, and may examine on oath all such parties or their agents and all such witnesses touching the matters to be inquired into by them. In cases where the award is less than one hundred dollars, the fees of all three arbitrators shall be paid by the Municipal Council, and the total amount of fees be limited to fifteen dollars; and no plaintiff in any action against the Council or against any person acting under their authority for any act done in pursuance of this chapter, shall recover a verdict or judgment in such action or suit, unless it shall appear to the Judge at the trial that such

plaintiff was prevented from having his claim adjudicated upon in manner provided by this section, by the wrongful act of the defendant Council or person.

ACTIONS AND SUITS.

**164.** All taxes, rates, assessments, dues and license fees, payable under this chapter, shall be recoverable in any court of record by action at the suit of the Chairman of the Council for the time being.

**165.** All actions *ex contractu*, or in *tort*, by or against the Council, may be taken in the name of the Chairman or, in case of a vacancy in the office of chairman, in the name of the Secretary.

**166.** No action shall be commenced against the Council or any person acting under their authority for anything done in pursuance of the provisions of this chapter, until one month after notice in writing shall have been delivered to the Chairman; or, in the event of a vacancy, as aforesaid, or of the absence of the Chairman, to the Secretary, or left at the office of the said Council by the party who intends to institute such action, his attorney, or agent, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring the same, and the name and place of abode of his attorney or agent.

LICENSED CAB DRIVERS.

**167.** The Council shall have power to make and prescribe, and from time to time to alter, a system of rules, regulations and bye-laws, in relation to cabs, carriages, sleighs, and vehicles plying for hire in the town, under which rules, regulations, and bye-laws, the Council may require every person carrying on the business of a cab, or carriage, cart or truck-driver, in the town, or driving a cab, carriage, cart, truck or sleigh, or vehicle for hire, to take out an annual or temporary license therefor; may fix and prescribe the amount of fee or tax to be paid for such license, and the terms and conditions upon which the same shall be held; may set apart in the streets or squares of the town stands for the use of licensed cab-drivers, under rules and regulations in relation to the use of such stands; may prohibit all parties from using or driving cabs, carriages, or other vehicles for hire in the town, or otherwise preventing, hindering or interfering with licensed cab-drivers or their business; may fix and establish a scale of fares, rates and charges, to be paid to licensed cab-drivers, and provide a summary method of recovery thereof; may fix and prescribe generally the duties and regulate the conduct of licensed cab-drivers in relation to the public, and the rights and duties of the public in relation to the said licensed drivers in all matters pertaining to their said business, and fix and impose appropriate fines and penalties for the breach, violation, or non-observance of any such rules, regulations, or bye-laws.

TRIAL OF OFFENCES.

**168.** Except where otherwise provided, all offences under this chapter and under any rule, regulation, or bye-law of the Council made or adopted

under the authority of this chapter, may be tried, and all fines, forfeitures, and penalties be imposed and recovered in a summary manner before a Justice of the Peace; and all fines and penalties so recovered shall be paid to the Council for the purposes of the town.

**169** Any party feeling himself aggrieved by the decision or order of any Justice under this chapter shall have the right to appeal therefrom to the next sitting of the Supreme Court, upon giving notice to the convicting Justice, within two days, of his intention so to appeal, and upon giving sufficient security, within four days, to prosecute the appeal and to abide by the result thereof.

SHORT TITLE.

**170.** This chapter may be cited for all purposes as "The St. John's Municipal Act, 1892."

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# CHAPTER 43.

## Of the Re-building of Harbor Grace.

SECTION
1.—Water Street—extent of, &c.
2.—Governor in Council may widen streets.
3.—Proprietors of land taken to be compensated. Mode of ascertaining value.
4.—Adjoining land may be awarded in lieu of money.
SECTION
5.—Houses built prior to 13th April, 1858, need not be removed.
6.—Buildings within certain boundaries to be of uninflammable materials.
7.—Limits of town.
8.—Provision for payment of compensation money.

**1.** Water street in the town of Harbor Grace shall extend from the Carbonear road on the east to Main's Brook on the west, and shall be seventy feet wide throughout, and all buildings which shall be erected on the south side and to the southward of said street shall be built of brick, stone, or other uninflammable material, and roofed or covered with iron, slate or other uninflammable material.

**2.** The Governor in Council may, by order, cause any of the streets in the said town to be widened to such an extent as he may deem expedient.

**3.** All persons being the owners or tenants of lands or tenements within the said town, whose interests shall be in any way affected by carrying into operation the provisions of this chapter, shall, after such land or tenements are marked off and appropriated for the uses aforesaid, be paid compensation for any damage they may sustain in that behalf;

and for the purpose of ascertaining the amount of such compensation, the party interested in the property affected shall name an arbitrator, who, with an arbitrator to be appointed by the Governor in Council, shall appraise the value of the said property; and in case any party interested in such property shall neglect or refuse to appoint an arbitrator within three days after notice so to do, the Governor in Council may appoint such arbitrator. The two arbitrators, whether appointed by the Governor in Council or otherwise, shall, if necessary, appoint a third arbitrator, and the award of any two of such arbitrators shall be final. The said arbitrators shall be sworn before a Justice faithfully and impartially to discharge their duties under this chapter.

4. If the said arbitrators shall be of opinion that any proprietor of any ground required for the said street or fire-break may be indemnified at a less expense to the public by having an equal portion of ground assigned to him from any ground adjoining, and that such adjoining ground may be taken without material injury to the proprietor thereof, the said arbitrators may mark of so much adjoining ground as they shall think sufficient to replace the ground required for the said street or fire-break; and the ground so marked off shall belong to the first-mentioned proprietor and shall be in lieu of all indemnity whatever, and the value of the same so to be ascertained by arbitration shall be paid to the proprietor from whom the same was taken, and shall be a full satisfaction and release of the same and of all right and title thereto: Provided that if the land so to be given shall not be deemed an equivalent for the land dedicated to the said street or fire-break, the said proprietor shall be paid such sum as may be, with the land so to be given, a full satisfaction for the land so dedicated.

5. In widening the said streets or fire-breaks it shall not be compulsory to remove any houses or buildings erected prior to the thirteenth day of April in the year one thousand eight hundred and fifty-eight, without the previous approval of the Governor in Council, and unless such removal can be effected without entailing a heavy expense.

6. All houses, buildings, or erections of wood which shall hereafter be built on the south side and to the southward of Water street aforesaid, shall be public nuisances, and may be abated by order of any stipendiary Justice; and the party erecting or building any such houses, buildings or erections of wood, contrary to the provisions of this chapter, shall be liable for every such offence to pay a fine not exceeding fifty dollars, to be recovered before such stipendiary Justice in a summary way by any person; which fine, when recovered, shall be paid over to the Receiver General for the use of the colony.

7. For the purposes of this chapter the limits of the said town shall be as follows: Commencing at the end of the Carbonear road on the east, and thence by the waters of the harbor until reaching Main's brook on the

west, thence following the course of said brook until it reaches the continuation of Harvey street or the postal road and Harvey street to the Carbonear road on the east, and thence following the said Carbonear road south to the place of commencement.

8 In payment of any amount exceeding one hundred dollars for compensation under this chapter, the Governor in Council may cause to be issued to the parties entitled a debenture in the form of this chapter annexed, and any sum under that amount the Receiver General shall, on warrant from the Governor, pay out of any moneys unappropriated in his hands

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FORM.

COLONY OF NEWFOUNDLAND.

Debenture, No. $

By virtue of the 43rd chapter of the Consolidated Statutes (Second Series), entitled "Of the Rebuilding of Harbor Grace," the bearer hereof is entitled to receive at the office of the Receiver General, within twenty-five years from the date hereof, the sum of dollars and cents, and also interest on the same at the rate of five dollars per centum per annum on the last days of June and December in each year, on production of this debenture at the office of the Receiver General.

Dated at St. John's, Newfoundland, this day of Anno Domini, 18 .

*Receiver General.*

Countersigned

*Colonial Secretary.*

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# CHAPTER 44.

## Of the Re-building of Carbonear.

SECTION
1.—Orders of Governor in Council confirmed.
2.—Boundaries, &c., of main street prescribed.
3.—Surveyor General to mark out lines of streets and fire breaks.
4.—Penalty for building on streets or fire breaks.
5.—Compensation to be made. Arbitration.
SECTION
6.—Manner of paying compensation awarded.
7.—Adjoining land to be marked off
8.—Houses, &c., on south side of main street to be roofed with uninflammable materials.
9.—Line of main street.
Schedule.

1. All orders made by the Governor in Council, in pursuance of the provisions of an Act passed in the fifteenth year of the reign of her present

Majesty, and entitled "An Act to amend the Carbonear Street Act," so far as the same have been acted on, are hereby declared valid.

**2.** The main street of Carbonear, save as it may be altered by section nine of this chapter, shall extend around the harbor thereof from Taylor's beach on the south side, round the Pond head on the west end of the said harbor, and thence eastward to Crocker's Cove bridge, and shall be sixty feet wide in every part thereof; the south side of water side line of the said main street shall be and run as follows, that is to say: Between the north-east angle of James Kough's house and the north-west angle of Forward's stone store the said line shall run straight; between the north-east angle of the said stone store and the north-west angle of John Connelly's house the said line shall run in such a direction as the Surveyor General shall determine; and between the north-east angle of Casey's house and the north-west angle of Israel L. McNeil's house the said line shall run straight; and all other parts of the said south or water side line shall remain unaltered and as they were previously to the fire which happened at Carbonear on the fifth day of November, in the year one thousand eight hundred and sixty; and all houses, stores, buildings and erections whatsoever, which shall at any time hereafter be erected or built on or near the said street, whether the same be erected on any vacant spot of ground, or upon the site of any former building, shall be made to conform to the width of the said street as the same is hereby established and defined: Provided, that nothing herein contained shall make it compulsory to remove any house or store which had been erected before the seventh day of March, in the year one thousand eight hundred and sixty-one.

**3.** The Surveyor General shall lay down and mark out the lines of the said street according to the boundaries defined in this chapter, and also mark out the line and extent of, and form at his discretion a new street at Carboner, to be fifty feet wide, and which new street shall run in a parallel course, as near as may be, with the aforesaid main street; and also mark out, make and form three cross-streets or fire-breaks. Such cross-streets shall be at least seventy feet wide, and shall extend from the harbor of Carbonear, northwardly, to such new street, and shall be laid out, as nearly as may be, at right angles with the said new street; and after such time as any of the said streets and fire-breaks (which shall first be approved of by the Governor in Council) shall be laid out, and compensation shall be made or tendered for the property necessarily appropriated for such purposes, in the manner hereinafter provided, the ground included in any of the said streets or fire-breaks shall be public property; and all buildings and erections which then remain, or hereafter may be placed or erected on the said ground, shall be public nuisances and may be abated by order of any stipendiary Magistrate.

**4.** No person shall build, construct, erect, or excavate, or otherwise proceed in the commencement of any building or erection within the

limits and boundaries of the said main street, as defined in this chapter, nor within the lines marked or that may be marked out by the Surveyor General, and approved of by the Governor in Council, as and for the width of any street or fire-break, whether the party owning or claiming an interest in the ground embraced within the limits of any such street or fire-break shall or shall not have been paid or tendered compensation for the same; and all such buildings and erections which, from and after the seventh day of March aforesaid, have been or shall be so erected or constructed, or in any manner commenced to be so erected or constructed, shall be public nuisances, and shall be abated by order of any stipendiary Magistrate, who, after hearing the party complained of, or, in default of his appearance on being summoned for that purpose, if such nuisance be proved, shall make an order for the abatement thereof, which order shall be carried into effect by such means as such stipendiary Magistrate may deem expedient.

5. All owners or occupiers of lands and tenements within the said town, whose interests shall be in any way affected by the carrying of the provisions of this chapter into operation, shall, before such lands or tenements shall be appropriated for the uses aforesaid, be paid compensation for any damage they may sustain in that behalf; and for the purpose of ascertaining the amount of compensation to be made in any case, the party interested in the property affected shall name an arbitrator, and the Governor in Council shall name an arbitrator, and such two arbitrators shall, if necessary, name a third; and in case any party interested in such property shall refuse or neglect to appoint an arbitrator within seven days after notice so to do, or in case the arbitrators shall disagree in the choice of a third arbitrator, in either case the Governor in Council shall appoint a third arbitrator; the award of any two of such arbitrators shall be binding between all parties to such arbitration; and the said arbitrators shall be sworn before a Magistrate to do justice between the parties, and may summon and require the attendance before them of all parties interested in the property to be appraised by them or the agents of such parties, and also all witnesses, and require the production before them of all deeds and papers requisite to establish the title or interest of any party claiming in manner hereinbefore mentioned; and shall have power to examine on oath (to be administered by any one of such arbitrators) all such parties or their agents, and all such witnesses touching the matters to be enquired into by such arbitrators; and in estimating the damage which may be occasioned to any property under this chapter, the said arbitrators shall always take into account any additional value or advantage which may accrue to the several proprietors and occupants from the convenience and security afforded by the widening and opening of the said streets or fire-breaks. No expenditure shall be incurred for carrying this chapter into operation until an estimate of the whole cost of the improvements herein contemplated shall first have been prepared and submitted by the Surveyor General to the Governor in Council, and the consent of the Governor in Council to such expenditure, and to the time when such improvements shall be made, shall first have been obtained.

6. The Governor may draw warrants on the Receiver General for the payment of compensation to be awarded under this chapter; and in discharge of such warrant for any amount not less than one hundred dollars, drawn upon him for such purpose by the Governor, the Receiver General shall pay the parties in whose favor such warrant shall be drawn the amount of compensation to which he may be entitled, by debentures payable within ten years from the date thereof, and bearing interest at the rate of five dollars per centum per annum, which debentures shall be redeemable after three months' notice given in the *Royal Gazette*, at the expiration of which notice all interest on all such debentures mentioned therein shall cease; and all interest payable upon sums for which such debentures shall be issued as aforesaid, shall be payable half-yearly at the office of the Receiver General, on the production of such debentures before him, on the last days of June and December in each year, and such debentures shall be assignable and (save those already issued) shall be according to the form in the schedule to this chapter annexed.

7. If the said arbitrators shall be of opinion that any proprietor of any lands required for any street or fire-break may be indemnified at a less expense to the public by having an equal portion of ground assigned to him from any ground adjoining, and such adjoining ground may be taken without material injury to the proprietor thereof, the said arbitrators may mark off so much of the adjoining ground as they shall think sufficient to replace the ground required for such street or fire-break, and the ground so marked off shall belong to the first-mentioned proprietor, and shall be in lieu of all indemnity; and the value of the same, to be ascertained by arbitration in the manner aforesaid, shall be paid as aforesaid to the proprietor from whom the same was taken, and such payment shall be a full satisfaction and release of the same, and of all right and title thereto: Provided that, if the land so to be taken shall not be deemed an equivalent for the land dedicated to the street or fire-break, the said proprietor shall be paid such sum as may be, with the land so to be given, a full satisfaction for the land dedicated.

8. All houses and buildings of every description hereafter to be built or erected on the south side of the said main street shall be roofed with uninflammable materials.

9. The main street of Carbonear shall extend round the harbor thereof, from Taylor's Beach, on the south side, round the Pond head, on the west end of the said harbor, and thence eastward to Crocker's Cove bridge, and shall be sixty feet wide in every part thereof; the north side line of said main street shall be and run as follows, that is to say: From the beach to the south-east corner of Nicholle's shop, thence within two feet of John Rorke's stone building lately erected, thence to the south-western corner of Thomas Hagan's shop and dwelling house, and thence continuing the line prescribed by the second section of this chapter; and the southern or water-side line shall be a line drawn parallel to and at

a distance of sixty feet from said north line, so far as the same is altered by this section, and thence shall be and continue as directed by the second section of this chapter.

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## SCHEDULE.

### Colony of Newfoundland.

No. . $

By virtue of chapter 44 of the Consolidated Statutes of this Colony, (second series), entitled "Of the Re-building of Carbonear," the bearer hereof is entitled to receive at the office of the Receiver General of this Colony, within ten years from the date hereof, the sum of dollars, and also interest on the same at the rate of five dollars per centum per annnum yearly, on the last days of June and December in each year, on the production of this debenture at the office of the said Receiver General.

Dated at St. John's, Newfoundland, the day of , A. D. 18 .

*Receiver General.*

Countersigned,

*Colonial Secretary.*

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# CHAPTER 45.

## Of the Administration of Local Affairs in Outport Districts.


SECTION

1.—The control of local affairs of districts to be vested in "Boards."
2.—Five members.
3.—Powers of Boards.
4.—Governor's proclamation applying provisions of this chapter.
5.—Qualification of members.
6.—Petition of inhabitants may ask for powers.
7.—Election every second year.
8.—Vacancy.
9.—No member or Government official shall be on Board.
10.—Election void in certain cases.
11.—Qualification of voters.
12.—Registration.
13.—Revision of lists of voters not necessary.
14.—Fee.
15.—Mode of election.
16.—Road Boards abolished.
17.—Chairman and deputy.
18.—Duties of deputy.
19.—Duties of chairman.

SECTION

20.—All money orders shall be authorized by a vote of the Board.
21.—Powers of Boards.
22.—Powers of officers and servants.
23.—Contracts.
24.—Actions taken in name of the chairman.
25.—Power of Board to make rules.
26.—Compensation to chairman.
27.—Board shall furnish accounts to chairman of the Board of Works.
28.—Report to Legislature.
29.—Shall not incur indebtedness.
30-33.—Powers of Boards and their servants.
34.—Compensation.
35.—Power to make rules for certain purposes.
36.—Publication of rules.
37.—Application of moneys.
38.—Legislative grant of funds.
39.—Funds for main lines and other roads.
40.—No advances shall be made by members of Boards.
41.—Not apply to St. John's.


**1.** The control and management of the local affairs of such districts of this Island and sections thereof as shall be defined in the manner provided by section four of this chapter, shall be vested in elected Boards, to be called "The Divisional Board," and in this chapter hereinafter described as "the Board."

**2.** Five qualified electors shall be elected at the time and in the manner described, and shall constitute the Board.

**3.** The powers, duties and functions of the Boards shall be exercised and performed within the limits prescribed in the Proclamation of His Excellency the Governor.

**4.** Upon a Proclamation of His Excellency the Governor, applying the provisions of this chapter to any electoral district of this Colony, or division of a district, the said Proclamation shall prescribe—

(1.) The location and limits of each and every division in the said electoral district for the purposes of this chapter.

(2.) The time and place for the election of the Board, the mode of election, and all proceedings in connection therewith.

5. Any person, being a householder, who for a period of not less than a year immediately preceding date of election has resided in the division of a district for which the election is held, and who shall have been duly nominated by not less than five electors, shall be qualified to be elected a member of the Board for such division of a district.

6 The Governor in Council may, on a petition of two-thirds of the qualified electors in any electoral district, or division of a district, in which the provisions of this chapter have not been enforced, make provision for carrying said chapter into effect, and members so elected shall hold office from date of election until the next general election of members of Boards.

7. An election of members shall take place in the month of December in every second year from the first election.

8. In the event of a vacancy among the members of the Board, the vacancy shall be filled by such person or persons duly qualified under section five of this chapter, as the Board may elect by ballot.

9. No member of the Legislature or permanent Government official shall be elected as a member of a Board.

10. If any person, hereinbefore disabled or declared to be incapable to sit or vote on a Board, shall be elected and returned as a member of a Board, such election or return shall be void, and if any person so disqualified as aforesaid shall presume to sit or vote as a member of such Board, such person so sitting or voting shall, for each time he shall so sit or vote, forfeit the sum of one hundred dollars, to be recovered by any person who may sue for the same in the Supreme Court.

11. Subject and except as hereinafter provided, the persons who shall be qualified to vote at the election of any member of a Board shall be every male British subject eligible to vote for the election of a member of the House of Assembly.

12. Except as hereinafter provided, no person shall be entitled to vote at the election of a member of a Board whose name shall not be on the list of registered voters for the electoral district within which such Board may be elected.

13. No special revision of the lists of voters shall be necessary under this chapter, but the last regular list of registered voters resident within the sub-division to which it refers, and made under the "Election Act, 1889," or any amendment thereof, shall be accepted and acted upon as valid for the purposes of this chapter, except that any male person presenting himself to vote under this chapter, otherwise qualified, and being

of the full age of twenty-one years, and who has not had an opportunity of being registered, shall be entitled to vote

**14**. Every candidate for the office of member of a Board shall, at the time of nomination, deposit with the Returning Officer the sum of ten dollars, which shall be applied towards the payment of the expenses incident to such election.

**15**. All elections under this chapter shall be held, as nearly as circumstances will permit, in the same manner and subject to the same regulations, conditions and provisions as are made, prescribed and provided in relation to election of members of the House of Assembly, and all and singular the powers, duties and functions of the Governor in Council, in relation to election of members of the House of Assembly, shall apply to elections under this chapter, and Returning Officers, Deputy Returning Officers, Poll Clerks, Magistrates, Justices of the Peace, Constables, and other officers shall have, exercise, and enjoy, and perform, and discharge, all and singular the same powers, rights, duties and privileges in and about and in relation to such election as are provided in the case of the election of members of the House of Assembly, save and except as the same may be altered by the provisions of this chapter, or in such manner by ballot as may be prescribed in the Proclamation of His Excellency the Governor in Council.

**16**. From and after the first day of January, A. D. 1891, in the case of every district, or division of a district, coming under the provisions of this chapter, the office of chairman and member of Road Board shall cease and determine, and the control, direction and management of the affairs and business of the Road Boards, and all and singular the powers, duties and functions of the said chairman and members thereof shall pass to and become vested in and pertain to the Board.

**17**. The Board shall elect two of its members to be chairman and deputy chairman, respectively, of such Board.

**18**. In case of the illness, absence or death of the chairman, the deputy chairman shall discharge all the duties and functions of the chairman.

**19**. The chairman shall call all the meetings of the Board when requested to do so, in writing, by any member of it, and at any other time he may deem necessary, by giving each member of the Board, not absent from home, notice in writing of the time and place of meeting. The chairman shall preside at all meetings of the Board, and enforce order. He shall only be entitled to a casting vote. His decision on all points of order shall be final, when supported by a majority of the members of the Board, or by any three members beside himself. The chairman shall sign

all orders authorized by the Board and no other, and shall keep regular minutes of all meetings. At the end of each year the chairman shall see that all reports and accounts are prepared for the annual meeting, and are forwarded to the chairman of the Board of Works. He shall call and preside at the said annual meeting, as hereinafter specified, and thereafter shall demit his office and hand over to his duly elected successor in office all property thereto belonging, under a penalty not exceeding twenty dollars for neglect or refusal to perform any of the aforesaid duties.

**20.** No money orders shall be drawn on behalf of the board unless the sums or payments for which such orders are drawn have been duly authorized by a majority vote of the board.

**21.** Within the limits prescribed by the Governor's proclamation, and except as herein otherwise provided, the board shall have, possess, exercise, perform and discharge all and singular the functions, powers, rights, obligations and duties which, under any act or law in force before the passing of this chapter, have been vested in or exercised, performed or discharged by—

(1.) The Road Boards, namely, relating to the making, constructing, maintaining, repairing, or improving of roads, streets, lanes, highways, fire-breaks, or thoroughfares:

(*a.*) The constructing, maintaining, repairing, opening or altering of roads, bridges, sewers, drains and gratings.

(*b*) The cleansing of the towns and settlements, and all matters relating to the sanitary condition thereof

(*c.*) The removal of obstructions from the public streets, lanes and thoroughfares, and the prevention and abatement of nuisances.

(*d.*) The lighting of the towns and settlements

**22.** The Chairman, officers and servants of the board shall, in respect of all matters enumerated in the preceding section, have, exercise, and perform, all and singular the powers, rights, obligations, and duties of the Chairman, officers, and servants of the Road Boards

**23.** All contracts or agreements of or with the board shall be made in the name of the chairman, and signed by him when duly authorized by the board.

**24.** All actions by or against the board may be taken in the name of the chairman or deputy chairman, and no action shall be commenced against the board for anything done in pursuance of the provisions of this chapter until one month after notice in writing shall have been delivered to the said chairman or deputy chairman, and left at the place of meet-

ing of the said board by the party who intends to institute such action, his attorney or agent, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring the same, and the name and place of abode of his attorney or agent.

**25** The boards shall have power to make rules and bye-laws for the regulation and conduct of their own affairs: Provided that the same shall not be inconsistent with the provisions of this chapter.

**26**. Out of the funds at the disposal of the Board, a sum of five per cent of all monies actually expended, shall be applied to the compensation of the chairman for his services.

**27**. The Board shall, every year, furnish to the chairman of the Board of Works, full and detailed accounts of receipts and expenditures upon all services and purposes, which accounts shall be made up to the thirty-first day of December, and shall be furnished to the Chairman of the Board of Works not later than the thirty-first day of January, and shall be laid before the Legislature at its next session, and an annual report of all moneys expended by the Board shall be published by the Board for the information of the voters of the district or division of a district concerned.

**28**. The Board shall furnish a report of the condition of all roads and public works within the district under their control, and of the works required to be performed, to be laid before the Legislature.

**29**. The Board shall not have power to incur, enter upon or contract, or become liable for any expenditure or indebtedness beyond or in excess of the amount of its actual receipts or income, without having previously received the express sanction or authority of the Legislature.

**30**. The chairman or other servants of the Board, duly authorized thereto in writing by the Board, may enter upon any Crown Lands, or upon the lands of any corporation or person whatsoever, and into all houses, buildings, tenements and erections upon such lands, whenever it may become necessary, for the purpose of making surveys or examinations or of obtaining necessary information relative to the construction, alteration, repairing, maintenance or inspection of sewerage, drainage or any other works which, under this chapter, the Board may be empowered to undertake or assume control of, for the purpose of carrying into effect the provisions of this chapter.

**31**. The Board, their engineers, officers, foremen, servants and laborers, shall have the right to enter upon any Crown lands or upon the lands of any corporation or person whatever, and into all houses, buildings, tenements, and erections thereon, whenever it may become

necessary for the purpose of carrying into effect the work and system of sewerage, drainage and cleansing hereinbefore authorized, and to break up, dig, excavate, and open so much and so many of the public streets or thoroughfares or private property, or other places as may be necessary for fully and efficiently carrying into effect the said work and system, and to pass and repass into, over and upon such streets, thoroughfares, lands, tenements, buildings and premises, and to convey material over, through or upon the same, and to make, construct, and lay down pipes, drains, gratings,, or other necessary works in and upon the same, and from time to time to remove, alter or change the same.

**32**. The Board, their engineers, officers, foremen, servants and laborers may enter upon Crown lands, or the lands of any corporation or person for the purpose of necessary rights of way across, over or under such lands, and may enter upon, take and hold any of the said lands whenever the same shall be required for the purpose of constructing. altering, repairing, maintaining or inspecting any sewer, drain, street, building or work of any kind that may be undertaken by the Board, or that may become the property of the Board, or that may be or become subject to the Board.

**33**. The Board shall have power to alter or divert any water-course within the limits of their district, for the improvement of such water-course, or of the sewerage of the town or settlement, and may remove impure or offensive soil therefrom, lay pipes, construct drains, grade surrounding land, change the direction of or fill up the said water-course, as may be deemed by the Board to be necessary and expedient, and the Board shall have power to enter upon all lands within the limits aforesaid, to dig and excavate upon such lands, and to go under all buildings that may be erected thereon, and may require the owner or occupier of all buildings and erections upon said lands to make alterations in the walls, cellars, and other portions of said buildings and erections as may be necessary for the purposes of this chapter: Provided that the party on whose property the Board may require to perform any such operations may, before the commencement thereof, require sufficient security to be given for the due payment of any award that may be made to him under the following section.

**34**. For the purpose of ascertaining the damage that may be occasioned to any person whose interests may be in any way injuriously affected by the taking of lands or tenements, or of any water-course, or by the removal or alteration of any house, building, wharf, or store, or by the taking of any right of way over, under, or through any land, or by digging or excavating upon any land, or any damage of any kind that may be occasioned to any interested person by reason of the provisions of this chapter, and for the purpose of providing compensation for such persons, the same proceedings are to be had thereon as are provided by chapter 42, section 163, of these Consolidated Statutes

**35**. The Board may, from time to time, make such rules and regulations as may be deemed expedient or necessary, for—

(1.) Protecting the property of the said Board, and all parts and portions thereof, from trespass or injury.

(2.) Regulating in regard to drainage, the plans, inclination, and the materials of the pavement and roadway of public and private streets.

(3.) Prohibiting the use of any form of, or any mode of, management of any baths, water-closets, soil pans, sinks, cesspits, wells and other receptacles and fittings, the use of which may, in their judgment, tend to any fouling or contamination, or to endanger the public health.

(4.) Regulating the conduct of the officers, workmen and servants appointed, employed or hired, under and for the purposes of this chapter, and for providing for the due management and use in all respects of the property of the Board, and of the undertaking, and for its construction, completion, maintenance and extension, and for carrying into effect the purposes of this chapter generally.

(5.) Imposing such reasonable penalties as they may think fit, not exceeding twenty dollars, for breach of such regulations; and in case of a continuing offence, a further penalty not exceeding one dollar for each day after notice of such offence shall have been given by the said Board to the offender, which penalty may be recovered in a summary manner upon complaint before a stipendiary Magistrate.

**36**. Such rules or regulations shall be published in the *Royal Gazette*, and otherwise advertised as the Board shall deem expedient, and when so published in the *Royal Gazette* shall have the same force and efficacy as if the same were specifically incorporated in this chapter.

**37**. The moneys to be allocated to the Board as hereinafter provided, shall be annually applied to the construction, maintenance and repairs of roads, streets and sidewalks, the construction, improvement, maintenance and repairs of sewers, drains and gratings, the cleansing of the towns and settlements, and lighting the same, and general sanitary purposes; and the carrying out and performance of the other works and duties prescribed by this chapter, within the limits of the towns and settlements hereafter defined by Proclamation.

**38**. For the purpose of providing the funds necessary to meet the expenditures authorized by the preceding section, there shall be annually voted by the Legislature, from the funds of the Colony, to the Board, a

proportion of such sum as shall be appropriated annually by the Legislature out of the local appropriation for roads, streets and bridges in the electoral districts of the Island aforesaid.

**39.** The Board shall be authorized to draw upon the Financial Secretary in such form as may be determined by the Governor in Council, for such moneys as may be appropriated by the Legislature for the purposes of making and repairing local roads in the district under its control, and for such other moneys appropriated for main lines or otherwise as may be determined by the Governor in Council.

**40.** No advances in cash or goods shall be made by any member of a Board on account of work to be thereafter done for or under direction of the Board.

**41.** The provisions of this chapter shall not apply to the Municipal District of St John's.

# TITLE V.

## OF THE PUBLIC HEALTH.

## CHAPTER 46.

### Of Boards of Health, Health Officers and Quarantine.

SECTION
1.—Power to Governor in Council to make quarantine orders.
2.—To be notified by Proclamation.
3.—To have the force of law.
4.—Governor in Council may appoint officers.
5.—Custom officers and pilots to be subject to orders of Governor in Council.
6.—May appoint Boards of Health.
7.—May appoint Medical Health officer.
8.—Duties of Boards of Health.
9.—Powers of Boards of Health.
10.—Additional powers to Boards of Health or Justices.
11.—Penalty for interfering with Medical Practitioner.
12.—Duties of householders.
13.—Persons suffering from contagious disorder exposing himself, subject to penalty; duties of drivers of vehicles, &c.
14.—Powers to enter places suspected to be dangerous, &c.
SECTION
15.—Definition of "Nuisance."
16.—Powers of Board of Health to isolate and quarantine.
17.—Powers of St. John's Municipal Council.
18.—Penalty for refusing to comply with regulations, &c.
19.—Servants of Boards of Health protected.
20.—Power to Governor to affix imprisonment or other penalties.
21.—Power to Governor in Council to award compensation.
22.—Vessels to be charged with rates or fees.
23.—One month's notice of action to be given.
24.—Appointment of Public Health officer.
25.—Medical Practitioners to report certain diseases.
26.—Establishment of Quarantine.
27.—Power of Governor in Council to make rules for preservation of public health.
28.—Procedure; appeal.

1. The Governor in Council may make such general and particular Quarantine orders and regulations applicable to vessels, goods, persons and things, being within this Colony or imported hither from abroad, as he may deem expedient for preventing the introduction or spread of contagious or infectious disease, and may affix penalties, forfeitures and punishments for the breach of any such general or particular orders and regulations, and for the breach or violation of any provision of this chapter, except when otherwise provided.

2. The said general orders and regulations shall be notified by Proclamation or published in the *Royal Gazette*, and the production of any such Proclamation or publication shall be evidence of the making, date and contents thereof Particular orders may be proved either by the production of the original or of a paper purporting to be a copy thereof, certified to be such under the hand of the Colonial Secretary.

3. Such general and particular orders and regulations shall have the force of law while they remain unrevoked; their expiry, revocation or amendment shall not prevent any person liable for a breach or violation during their operation from being tried and punished therefor within twelve months after the expiry of such order or regulation.

4. The Governor in Council shall appoint all necessary officers for the due execution of the foregoing provisions of this chapter, and the orders and regulations to be made thereunder, and shall define their respective duties and authority.

5. Custom House officers, masters of tug boats, and licensed pilots, shall be subject to the orders of the Governor in Council, for the purpose of aiding in execution of the provisions of this chapter and the regulations and orders to be made thereunder.

6. The Governor in Council may appoint Boards of Health and define the extent of the district over which their authority shall extend. Boards of Health shall make rules and regulations for the preservation of the public health and for rendering effectual all measures of precaution against the outbreak or spreading of disease, such rules and regulations to have the force of law when approved of and published, by the authority of the Governor in Council, in the *Royal Gazette*.

7. The Governor in Council may also, when and for such time as may be considered necessary, appoint a Medical Health Officer, whose duty it shall be, subject to the directions of the Governor in Council, to co-operate and advise with the Board of Health in all matters pertaining to the public health. The Governor in Council shall fix the amount of remuneration to be paid to such Medical Officer.

8. It shall be the duty of Boards of Health, periodically and personally, or by qualified deputies, to inspect all parts of the district under

their control, and in case of the existence of any condition in their opinion noxious to the health of the inhabitants, the board shall cause such conditions to be removed, and in case of the appearance or danger of the appearance of any contagious or infectious disease, it shall be the duty of the Boards of Health to meet not less than twice a week, and by means of isolation, quarantine and disinfection applicable to all persons, places and things, and otherwise to take all steps necessary or desirable to prevent the spread of such disease.

**9.** The Boards of Health may order or cause any building, place, vessel or boat, to be whitewashed, fumigated, or otherwise purified, at the expense of the owner or tenant, and may order or cause anything dangerous to the public health to be removed or destroyed.

**10.** Any Board of Health, or, where none exists, any Justice may order to be removed from any dwelling house or place, or from any vessel or boat approaching near to or within any place or port, any person sick with any contagious or infectious disease to any hospital, house or place proper for that purpose, it being first certified by a medical practitioner, when available, that such removal is necessary for the public health. And if any person be sick with any infectious or contagious disease in any house or place, and such person cannot, in the opinion of such medical practitioner be removed, then the Board of Health, or Justice, as the case may be, may cause such house or place, or any contiguous house or place, to be vacated by other occupants, suitable provision being made for them by such Board or Justice, for such time as the safety of the inhabitants shall require.

**11.** Where any person is sick with contagious disease, or is suspected to be so, and no medical practitioner is in attendance on such person, the Board of Health may send a medical practitioner to visit such person. Any person interfering with or preventing the visit of such medical practitioner shall be liable to a penalty not exceeding three months. Every medical practitioner shall immediately make a report to the Board of Health of every contagious or infectious disease, so visited by him, under a penalty of not exceeding fifty dollars.

**12** It shall be the duty of any householder, so soon as he shall become aware that any occupant of his house is suffering from an infectious or contagious disease that may be detrimental to the public health, to give notice of such disease to the chairman of the Board of Health, or a Justice of the Peace, as the case may be, under a penalty not exceeding fifty dollars.

**13.** Any person suffering from any contagious or infectious disorder who wilfully exposes himself, without proper precaution against spreading the said disorder, in any street, public place, or public conveyance, and any person in charge of one so suffering who so exposes the sufferer, and

any owner or driver of a public conveyance who does not immediately provide for the disinfection of his conveyance after it has, with the knowledge of such owner or driver, conveyed any such sufferer, and any person who, without previous disinfection, gives, lends, sells, conveys, transmits, or exposes any bedding, clothing, rags, or other things which have been exposed to infection from such disorders, shall, on conviction before a Justice of the Peace, be fined a sum not exceeding one hundred dollars, or, in default thereof, to imprisonment for a term not exceeding three months: Provided that no proceedings shall be taken against persons transmitting, with proper precautions, such articles for the purpose of having them disinfected by order of the Board or a medical man.

**14** Any Board of Health, or any officer duly authorized by such Board, may open and enter and inspect private places where noxious substances dangerous to the public health may be reasonably suspected to exist, and shall order all nuisances and filth to be removed therefrom or destroyed; and if the same shall not be removed or destroyed within twenty-four hours after such order, the person neglecting or refusing to obey such order shall be liable to a penalty not exceeding twenty dollars; or the Board may, in their discretion, cause the same to be removed or destroyed, and may recover the expenses of so doing in a summary manner in the name of the officer inspecting from the person so offending.

**15**. The word "nuisance" under this chapter shall include any premises in such a state as the Board of Health or Justice, as the case may be, may consider injurious to the public health; any pool, ditch or gutter, water-course, privy, urinal, cess-pool, drain or ash-pit, so foul as to be injurious to the public health; any accumulation or deposit which is injurious to the public health.

**16** Boards of Health shall have the power to isolate and quarantine any person, house or place or thing, during or in anticipation of an epidemic that they may consider likely to be injurious to the public health. They may cause all nurses, practising as such, to be registered in a register to be kept by the chairman of the Board of Health for that purpose, and make rules for their guidance during the time of epidemic, as provided for under section six of this chapter, and may take any other measures whatever in their judgment desirable for the more effectual carrying out of the purposes of this chapter.

**17**. The St. John's Municipal Council, their superintendents, inspectors, officers and servants, shall have full power and authority to carry into effect all rules, regulations, orders and directions from time to time made by the Board of Health, and considered necessary for the preservation of the public health

**18**. Any person, without sufficient cause, refusing to obey or comply with any order of the Board of Health, shall be liable, for every offence,

to a fine of not exceeding fifty dollars, or imprisonment not exceeding one month. And any person unlawfully hindering, obstructing, or assaulting any servant or officer of the Board of Health, or other person acting under their authority, in the performance of his duty, shall be liable to the same penalties as are provided for hindering, obstructing or assaulting a police constable in the execution of his duty.

**19.** The servants and officers of the Board of Health and all persons acting under their authority in carrying into effect the provisions of this chapter, shall have, and be entitled to all the protection, privileges and immunities pertaining to Police Constables and officers in the discharge of their duties.

**20.** The Governor in Council shall, amongst the general orders to be made under this chapter, adjudge and affix the imprisonment, penalties and forfeitures that shall attach against any person or vessel, and the estate and effects of any person who shall violate the provisions of this chapter, or of any general or particular order made thereunder. In cases of violation of this chapter or of any rules and regulations made thereunder where no particular punishment is otherwise provided by this chapter, the offender, on conviction, shall be liable to a fine not exceeding one hundred dollars, or in default thereof, to imprisonment for a term not exceeding six months.

**21.** The Governor in Council may make compensation out of the general revenue of the colony to any person whose property, goods, or effects may be destroyed or damaged in carrying into effect the provisions of this chapter; but nothing herein contained shall be construed as conferring any claim or creating any liability on the part of any person whomsoever for any indirect or consequental damage or otherwise by reason of anything lawfully done or caused to be done under the authority of this chapter.

**22.** All vessels, and any particular class of vessels, and all vessels in particular, any or either of them, shall, from time to time, at particular times, or at all times when the Governor in Council may deem it expedient, be subject to and chargeable with such fees and dues, either rates on the tonnage or otherwise as may be directed by any general or particular order, and such fees and dues shall be a lien on the vessel before all other claims, and no vessel shall be entered or cleared outwards at the Custom House if such fees and dues be not duly paid, and the masters and owners of any such vessel shall be liable for such fees.

**23.** If any action shall be commenced against any person for any matter or thing done in pursuance or execution of this chapter, or of any order made by virtue hereof, the defendant in such action may plead the general issue and give this chapter and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance

and in the execution of this chapter; and no such action shall be brought against any person, for any matter or thing done in pursuance of this chapter, but within the space of three months after such matter or thing shall have been done, and without giving the defendant one month's notice in writing. All such actions shall be tried summarily before a Judge of the Supreme Court, and if the question be one of compensation for any loss or damage sustained by any person under the operation of this chapter, the defendant shall have the right to have such question tried by one arbitrator, and if the parties cannot agree upon one, the said arbitrator shall be appointed by a Judge of the Supreme Court, and his award shall be final and binding upon the parties.

**24**. Where there shall be no Board of Health, the Governor in Council may, as occasion requires, appoint a stipendiary Magistrate, a Justice of the Peace, or other person, to be a Public Health Officer in any district to be named and defined in such appointment, who shall exercise all and singular the powers of a Board of Health under this chapter within the district so named and defined And in case no Board of Health or Public Health Officer shall have been appointed, a stipendiary Magistrate or Justice of the Peace may exercise all the said powers of a Board of Health.

**25**. In all cases of small-pox, diphtheria, scarlet fever, typhus fever typhoid fever, measles, and Asiatic cholera, every medical practitioner who shall attend on such disease shall immediately, or within twelve hours after he has ascertained the fact of such disease, report the same in writing to the Board of Health or the Public Health Officer appointed under the next preceding section of this chapter, within whose district such disease or diseases may arise or to a stipendiary Magistrate or Justice of the Peace acting in the absence of a Board of Health or Public Health Officer, under a penalty for each offence of not less than ten nor more than fifty dollars, to be recovered in a summary manner before a stipendiary Magistrate. For every such report such medical practitioner shall receive a fee of twenty-five cents: provided always, that the Board of Health or Public Health Officer, appointed under the next preceding section of this chapter, may at any time, by notice in writing to any medical practitioner, require him to report contagious or infectious diseases other than those in this section beforementioned; such notice to the medical practitioner shall always specify the name of the disease to be reported and the period of time for which such reports shall be required.

**26**. Whenever a Board of Health or the Public Health Officer appointed under section 24 of this chapter, or stipendiary Magistrate or Justice of the Peace acting as such, may deem it necessary to establish quarantine for the purpose of checking or preventing contagious diseases, the persons employed by the said Board of Health or Public Officer, or stipendiary Magistrate or Justice of the Peace acting as such, to maintain such quarantine, may use all necessary force to prevent any one entering or leaving any dwelling-house, building, place, boat or vessel where such

quarantine has been established, except members of the medical or clerical profession, or officials under the direction of the Board of Health or Public Health Officer appointed under this chapter, or stipendiary Magistrate or Justice of the Peace acting as such. Any one interfering with, obstructing or disobeying the lawful commands of persons so employed by the stipendiary Magistrate, Justice of the Peace, Board of Health or Public Health Officer, shall be subject to a fine not exceeding fifty dollars, or in default of payment, imprisonment not exceeding twenty days.

**27.** The Governor in Council may make rules and regulations for the preservation of the public health and for rendering effectual all measures of precaution against the outbreak or spreading of disease, and may also affix penalties for the breach of said rules and regulations, with a maximum penalty of one hundred dollars fine for breach of any of said rules or regulations, and, in default of payment, imprisonment not exceeding thirty days Said rules and regulations when published in the *Royal Gazette* to have the force of law as if embodied in this chapter.

**28.** All offences against the provisions of this chapter, or any rule or regulation made thereunder, may be tried summarily before any stipendiary Magistrate Any person subject to imprisonment or fine under this chapter may appeal from the judgment or order of such Magistrate to the Supreme Court on giving sufficient security to prosecute such appeal and to abide by and perform the order or decree of the Court therein; and on the hearing of such appeal such Court may admit other evidence than that adduced before the Magistrate, and may confirm, vary or set aside the judgment of such Magistrate, and make such order as to the execution of any judgment as to such Court may seem meet The appeal provided by this section may be heard before one Judge sitting as the Supreme Court either in St John's or on circuit.

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# CHAPTER 47.

## Of Vaccination.


SECTION

1.—Governor in Council may put in force provisions of this chapter.
2.—Duty of Vaccinators.
3.—Penalty for contravention of chapter. Refusal to pay vaccination fee; penalty; proviso.
4.—Power of Justice; every subsequent refusal to constitute a new offence.
5.—Provision for compensation; for paupers.
6.—Governor in Council to appoint vaccinators.
7.—And to make regulations.
8.—Meaning of term "children."
9.—Provision for persons not paupers.


**1** The Governor in Council may, by proclamation, put in force the provisions of this chapter in this colony and its dependencies, or in any district or part thereof

2. When this chapter shall have been put into operation in any district or place, the Vaccinators shall carry out the provisions of this chapter by making enquiries as to such persons as have not been effectively vaccinated, or who have not already had small-pox, and shall require them to be vaccinated; or, in the case of children, shall require their parents or guardians to submit such children for vaccination.

3. Any parent or guardian of any child so required to be vaccinated, or any other person acting in contravention of, or failing to comply with the provisions of this chapter, or any person wilfully obstructing a vaccinator in carrying out the provisions of this chapter, or any person vaccinated under this chapter not coming within the provisions of section five of this chapter, who, upon the performance of such vaccination, shall refuse or neglect to pay the vaccinator the fee herein prescribed, shall incur a penalty not exceeding two dollars for every offence, and in default of payment thereof, shall be liable to be imprisoned for a period not exceeding one week: Provided that any person refusing to be vaccinated, or any parent or guardian refusing to submit a child for vaccination, shall not be liable to any penalty if it shall be made to appear that there is a satisfactory reason as regards health for such person or child not being vaccinated; but the burthen of shewing such cause shall rest with the party charged.

4. In any proceeding under this chapter, the Justice may, with or without inflicting a penalty, make an order that vaccination shall take place; and every subsequent refusal or neglect to obey such order shall be deemed to be a new offence.

5. Upon the production of a detailed statement, giving the name of each person vaccinated by him, sworn to by the Vaccinator before and certified by a Magistrate, and upon the production of a certificate by a Poor Commissioner that such person is a pauper or on the pauper list, or a certificate by a Magistrate, Justice, Clergyman, or Poor Commissioner, that such person is unable to pay the prescribed fee, the Vaccinator shall be entitled to receive remuneration from the colony at the rate of twenty-five cents for every such person upon whom the operation of vaccination has been successfully performed.

6. The Governor in Council shall appoint Vaccinators for the purposes of this chapter.

7. The Governor in Council may make regulations for the more effectual execution of this chapter, and such regulations shall have the same force as if embodied in this chapter.

8. Children in this chapter shall mean persons under the age of eighteen years.

9. In cases other than those provided for in section five of this chapter, the fee payable to Vaccinators for each vaccination performed shall be twenty-five cents.

# CHAPTER 48.

## Of the Inspection of Food.


SECTION

1.—Officer or constable may inspect any fish, meat, &c., exposed for sale, and if unfit for food, may cause it to be taken and dealt with by a Justice.

2.—Justice may condemn and order diseased meat, &c., to be destroyed, and fine person exposing same for sale.

SECTION

3.—Upon complaint on oath being made, penalties as in preceding section may be inflicted.

4.—Penalty for preventing any duly authorized person from entering premises.

5.—On complaint on oath warrant may be granted.

6.—Powers given to Superintendent of Police.

7.—Penalties to be recovered summarily.


**1.** Any officer specially appointed by the Governor in Council, or Municipal Inspector appointed under the St. John's Municipal Act, 1892, for the purposes of this chapter, or any Police Constable, may at all reasonable times, and shall upon the representation of any member of a Board of Health, Health Officer, Municipal Supervisor or Inspector, inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, meal, flour, butter, or milk, exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged. And if any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, meal, bread, flour, butter, or milk, appears, to such Officer, Inspector, or Constable, to be diseased, or unsound, or unwholesome, or unfit for food of man, he may seize and carry away the same himself, or by an assistant, in order to have the same dealt with by a Justice within twenty-four hours.

**2.** If it appears to the Justice that any animal, carcase, meat, poultry game, flesh, fish, fruit, vegetables, corn, meal, bread, butter, flour, or milk so seized is diseased, unsound or unwholesome, he shall condemn the same and order it to be destroyed, or so disposed of as to prevent it from being exposed for sale or used for the food of man, and the person to whom the same belongs or did belong at the time of exposure for sale or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding, for the first offence, twenty-five dollars for every animal, or carcase, or fish, or piece of meat, flesh or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, meal, bread, butter or flour, or for the milk so condemned, and, in default of payment of such fine, to imprisonment for a term of not more than one month, and for a second offence a penalty not exceeding one hundred dollars for every animal, or carcase, or fish, or piece of meat, flesh or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, meal, bread, butter, or flour, and, in default of payment, to imprisonment for a term of not more

than two months The Justice, who under this section is empowered to convict the offender, may be either the Justice who may have ordered the article to be disposed of or destroyed or any other Justice having jurisdiction in the place.

3. Upon complaint on oath made by any person before any Justice of the Peace, that any of the articles mentioned in the foregoing sections are being kept, or exposed or intended for sale, and are diseased, unsound or unwholesome, and upon proof thereof in a summary manner before such Justice, the like orders may be made and the like penalties and punishments inflicted as are provided by the preceding section.

4. Any person who in any manner prevents any officer appointed under this chapter, inspector or constable, from entering at a reasonable time any premises and inspecting any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, meal, bread, butter, flour, or milk, exposed or deposited for the purpose of sale, or of preparation for sale, and intended for the food of man, or who obstructs or impedes any such officer, inspector or constable, or his assistant, when carrying into execution the provisions of this chapter, shall be liable to a penalty not exceeding twenty-five dollars, or, in default of payment, to imprisonment for a term not exceeding one month.

5. On complaint made on oath by any officer appointed under this chapter, any member of the Board of Health, Health Warden, Municipal Supervisor, Inspector or Constable, any Justice may grant a warrant to any such officer or constable to enter any building, or part of a building, in which it shall appear that there is reason for believing that there is kept or concealed any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, meal, bread, butter, flour, or milk, which is intended for sale for the food of man, and is diseased, unsound or unwholesome, or unfit for food of man, and to search for, seize and carry away any such animal, or other article, in order to have the same dealt with by a Justice, under the provisions of this chapter. Any person who obstructs any such officer or constable in the performance of his duty under such warrant, shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding one hundred dollars, or in default of payment, to imprisonment for a term not exceeding two months.

6. The Superintendent of Police shall have authority, upon the request of the officer appointed under this chapter, or in any place where there is no such officer, of his own motion, from time to time to direct such members of the Police force as may be deemed necessary to do all such acts and perform all such duties as are authorized by this chapter, for the purpose of carrying into effect the provisions thereof.

. All penalties imposed by this chapter may be recovered in a summary manner before any Justice of the Peace.

# CHAPTER 49.

## Of the Regulation of the Sale of Poisons.


SECTION
1.—Unlawful for persons not duly authorized to import and sell poisons.
2.—What shall be deemed to be poisons.
3.—Poisons to be labelled.
4.—Persons selling must hold certificate.
5.—Before delivery of poison entry must be made of name, &c., of purchaser.
6.—Penalty for non-compliance with the law.
7.—Penalty for exposing poisons or poisonous ingredient.
8.—Poison may be used with certain precautions for destruction of rats, mice, &c.
9.—Chapter not to apply to medicines dispensed by Druggists, &c.


**1.** It shall be unlawful for any person in this colony to import, sell, dispense, or compound Poisons for sale, except in conformity with the regulations hereinafter prescribed in the succeeding sections.

**2.** The several articles named or described in the schedule to this chapter shall be deemed to be poisons within the meaning of this chapter.

**3.** It shall be unlawful to sell any poison by wholesale or retail, unless the box, bottle, vessel, wrapper, or cover in which such poison is contained, be distinctly labelled with the name of the article, and with the word "Poison" printed in red letters upon a white ground, or black letters upon a white ground, and with a separate label containing the name and address of the seller of the poison

**4.** It shall be unlawful for any person to import into this colony, or to sell, any of the poisons enumerated or described in the schedule to this chapter, unless such person holds a certificate from the President and Secretary of the Medical Society of St. John's, countersigned by the Colonial Secretary, certifying that such person is duly qualified to be an importer or dispenser of the goods so imported.

**5.** Before the delivery of any poison the seller shall cause to be made an entry in a book to be kept for that purpose, stating the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is required, and the signature of the person purchasing the same in a receipt book, to be kept by the seller of the same for that special purpose.

**6.** Any person selling or importing poison otherwise than as herein provided, or without the restrictions herein contained, shall, upon a summary conviction before a stipendiary Magistrate or two Justices of the Peace, be liable to a penalty not exceeding one hundred dollars. And for the purposes of this section the person on whose behalf any sale is made by any clerk, apprentice, or servant, shall be deemed to be the seller.

**7**. Every person who shall knowingly and wilfully set, lay, put or place, or cause to be set, laid, put or placed, in or upon any land, any flesh, meat, fish, fowl, or other substance which has been mixed with, or steeped in, or has imposed upon it, or is impregnated with, any poison or any poisonous ingredients, so as to render such flesh, meat, fish, fowl, or other substance poisonous and calculated to destroy life, shall, upon a summary conviction thereof, in the manner provided in the preceding section, be liable to a penalty of not less than fifty dollars for a first offence, and for each additional offence to a penalty of not less than one hundred dollars and three months' imprisonment. But nothing in this chapter contained shall prevent any person from being liable to any other penalty, damages, or punishment to which he would have been subject if this chapter had not passed.

**8**. Nothing in this chapter shall make it unlawful for the occupier of any dwelling house, or other building or the owner of any rick or stack of any cultivated vegetable produce to put or place, or cause to be put or placed, in any such dwelling house or other building, or in any enclosed garden attached to such dwelling house, or in the drains connected with any such dwelling house, or within such rick or stack, any poison or poisonous ingredient or preparation for the destruction of rats, mice, or other small vermin.

**9**. None of the foregoing regulations shall apply to any article when forming part of the ingredients of any medicine dispensed by a chemist and druggist.

## SCHEDULE.

Arsenic and its preparations.
Prussic acid.
All metallic cyanides.
All poisonous vegetable alkaloids as strychnine.
All atropine, &c., and their salts.
Aconite, and its preparations.
Tartar emetic.
Corrosive sublimate.
Cantharides, and its preparations.
Savin, and its oil.
Ergot of rye, and its preparations.
Essential oil of almonds, unless deprived of its prussic acid.
Opium and its alkaloids, and their salts.
Hydrate of chloral, and its preparations.
Chloroform.
Belladonna, and its preparations.
Phosphorus.

# TITLE VI.

## OF THE COURTS AND THE ADMINISTRATION OF JUSTICE.

## CHAPTER 50.

### Of the Supreme Court and Procedure therein.


SECTION
1.—Short title.
2-12.—Constitution, jurisdiction and powers of Court and Judges.
13.—Rules of Law.
14-15.—Sittings and distribution of business.
16.—Northern and Southern Circuits.
17-20.—Criminal jurisdiction, powers, &c., of Court on Circuit.
21.—Removal of prisoners from one gaol to another.
22.—Rules *nisi* from Circuit to be heard in St. John's.
23.—Judge on Circuit may try without jury.
24-27.—Chief Clerk and Assistant Clerks.
28.—Crier and Tipstaff.
SECTION
29-34.—Commissioners of Affidavits, &c.
35.—Trial and procedure.
36-50.—Arbitration.
51-67.—Attachment for debt.
68-73.—Imprisonment for debt.
74-89.—Partition.
90-135.—Costs.
136-142.—Proceedings for recovery of claims *ex contractu* against the Government.
143-145.—Inferior Courts.
146-148.—Pleadings and Practice.
149-153.—Rules of Court.
154-155.—Interpretation.
Schedules.


**1.** This chapter may be cited as "The Judicature Act, 1889."

CONSTITUTION, JURISDICTION AND POWERS OF THE SUPREME COURT AND THE JUDGES THEREOF.

**2.** The Supreme Court of Newfoundland shall have all civil and criminal jurisdiction whatsoever, conferred by the Imperial statute passed in the fifth year of the reign of His late Majesty, King George the Fourth, entitled "An Act for the better administration of Justice in Newfoundland, and for other purposes," and by the Royal Charter or Letters Patent under the great Seal, issued by virtue of the said statute, dated the nineteenth day of September, in the sixth year of His said Majesty's reign, and by any law in force in this colony. The said Court is also declared to be a Court of Admiralty, in pursuance of the Imperial Act 53 and 54 Victoria, entitled "An Act to amend the law respecting the exercise of Admiralty in Her Majesty's Dominions and elsewhere out of the United Kingdom," and with the powers and jurisdiction conferred by the said Act.

**3.** The Supreme Court shall continue to be composed, as at present, of a Chief Justice and two other Judges, to be appointed when vacancies may occur, as heretofore, or as may hereafter be provided by Her Majesty, and who shall be resident Barristers of the colony of at least ten years' standing; and the said Judges shall respectively have and exercise the like privileges, powers and authorities in Newfoundland and its dependencies, as are prescribed by the Act, Charter and laws aforesaid.

**4.** The Supreme Court may be held by one Judge, who may hear and determine all matters, except cases of treason and capital felony, motions

for new trials, motions in arrest of judgment, re-hearings, appeals, special cases, and transfers in matters of administration and probate, when at least two Judges shall be present: Provided that in these and in any other cases in which two Judges so sitting shall differ in opinion, the matter shall be reheard as soon as conveniently may be by the three Judges, and the judgment of any two shall be the judgment of the Court; and provided further, that nothing herein contained shall prevent the preferring and finding of any bill of indictment or any other proceeding, incident to the charge of treason or capital felony, before less than two Judges, save the actual trial and sentence in such cases.

**5**. In term, when it may conveniently be done, the Judges, or any of them, may, as the Supreme Court, sit apart and separately from the other or others, at the same time, for the trial and determination of any matter which may be heard and determined by one or two Judges, as the case may be; and the rising or adjournment of any one or more Judges shall not affect the sitting of the remainder.

**6**. Any Judge of the said Court may, subject to any rules of Court, exercise in Court or in chambers all or any part of the jurisdiction by this Act vested in the said Court in all such causes and matters, and in all such proceedings in any causes or matters as before the passing of this Act might have been heard in Court or in chambers, respectively, by a single Judge of the said Court, or as may be directed or authorized to be so heard by any rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute the Court, and two or more Judges may sit separately at such Court at the same time.

(2.) In like manner two or three Judges may sit at any time out of term, and exercise the jurisdiction which such numbers respectively might have exercised prior to this Act, and under this Act and the rules thereunder.

**7**. Subject to rules of Court, which shall have the same force and effect as if incorporated in this chapter, any one or more Judges may exercise in vacation all or any of the jurisdictions of the Supreme Court in all such causes and matters (whether continued from term or begun in vacation), and in all such proceedings in any causes and matters, as before the passing of this chapter might have been heard in Court by one or more Judges, and in all such cases any such Judge or Judges so sitting shall be deemed to constitute the Supreme Court.

**8**. In cases of urgency arising from absence, illness, or other cause, or the vacancy in the office of any Judge of the Supreme Court, it shall be lawful either in term or vacation or in chambers for another Judge to sit for the first-named Judge or with another or others, as the case may be, and to hear and dispose of any cause or matter by the first-named Judge partly heard, and to use the evidence which may have been taken by or before such first-named Judge.

**9.** Every judgment, finding or order of a single Judge, in Court or chambers, may be reviewed, varied or set aside by the Court constituted by any two or by the three Judges, subject, in cases in which two only sitting shall differ in opinion, to re-hearing and determination before the three Judges.

**10.** Where two Judges sit together in the first place and join in any judgment or order, the decision shall be final and absolute, unless by their leave; but if they differ in opinion, application may be made to the three Judges to review, vary or set aside such judgment or order.

**11.** It shall not be necessary, upon application for a new trial of a case tried by a Judge without a jury, that the same should be tried again, but the case may be finally disposed of, as to damages as well as other matters, upon the evidence already taken, with or without further evidence or re-examination. Where a case has been tried by jury it may, with consent of parties, be finally disposed of in manner aforesaid.

**12.** The Chief Justice may hold the office of Administrator of the Government of this Colony, with the emoluments and fees to the said office belonging.

### Rules of Law.

**13.** In every civil cause or matter commenced in the Supreme Court Law and Equity shall be administered according to the rules following:—

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief, upon any equitable ground, against any deed, instrument or contract, or against any right, title, or claim whatever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given in equity, the said Court, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given in a suit or proceeding in equity for the same or the like purpose properly instituted before the passing of this Act.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief, upon any equitable ground, against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Court, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court ought to have given if the same or the like matters had been relied on by way of defence in any suit

or proceeding instituted in that Court in equity for the same or the like purposes before the passing of this Act.

(3.) The said Court, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Court or any Judge thereof might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of Court, or any order of the Court, as might have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.

(4.) The said Court, and every Judge thereof, shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court in Equity would have recognized and taken notice of the same in any suit or proceeding instituted therein before the passing of this Act.

(5.) No cause or proceeding shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: provided always that nothing in this Act contained shall disable the Court from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce by attachment or otherwise any judgment, decree, rule or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply by motion in a summary way for a stay of proceedings in such cause or matter, either generally or so far as may be necessary for the purposes of justice, and such order shall thereupon be made as shall be just.

(6.) Subject to the foregoing and any other provisions of existing law, all legal claims and demands, and all estates, titles, rights, duties, obligations and liabilities existing by the common law or custom, or created by statute, shall be recognized and given effect to by the said Court and Judges, as they would have been prior to the commencement of this Act.

(7.) In every cause or matter, the Court and Judges shall grant either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies whatsoever, as any of the parties thereto may appear to be entitled to, in respect of any and every legal or equitable claim properly brought forward in such cause or matter, so that as far as possible all matters so in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any such matters avoided.

(8.) No claim of a *cestui qui trust* against his trustee for any property held on any express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations.

(9.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

(10.) There shall not be any merger, by operation of law only, of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

(11.) A mortgagor entitled for the time being to the possession or the receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof, shall have been given by mortgagees, may sue for such possession or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract, made by him jointly with any other person, and that in case he may sue or distrain jointly with such other person.

(12.) Any absolute assignment by writing, under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to be effectual in law (subject to all equities which would have been entitled to priority over the right of the

assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action, from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action, shall have had notice that such assignment is disputed by the assignor or anyone claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he thinks fit, pay the same into the Supreme Court, upon obtaining a Judge's order therefor, to abide the determination of the Supreme Court in respect thereof.

(13.) Stipulations in contracts, as to time or otherwise, which would not, before this Act came into operation, have been deemed to be, or to have become, of the essence of such contracts, in a court of equity, shall receive in the Supreme Court the same construction and effect as they would previously thereto have received in equity.

(14.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in the courts of common law, shall prevail.

(15.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estate claimed by both or by either of the parties are legal or equitable.

(16.) In all questions relating to the custody and education of infants, the rules of equity shall prevail.

(17.) Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of common law, the rules of equity shall prevail.

SITTINGS AND DISTRIBUTION OF BUSINESS.

**14.** There shall be at least two terms, or sessions, of the Supreme Court holden at the town of St. John's in every year, the first whereof shall commence on the twentieth day of May, and continue thence until the tenth day of June, and the second whereof shall commence on the twentieth day of November, and continue thence until the twentieth day of December: Provided that if either of the days of commencement, or of the close of any term shall fall upon a Sunday, then the Monday following shall be the first or last day of such term, as the case may be; and the Court may prolong either of the said terms, by adjournment, for a further period not exceeding six days, unless any cause shall be actually in the course of trial on the sixth day, when the Court may sit until the trial and adjudication shall have terminated. There shall be post-terminal sittings, to continue for one week at least, from and after the first Mondays in February, March, April and July in each year.

**15.** Anything in the foregoing section notwithstanding, the Governor may at any time by proclamation direct a term or session of the said Court to be holden, with all the powers of the Court sitting during the terms so as aforesaid established. When it shall happen that any business pending during any term provided for by such proclamation, shall not be concluded at the time appointed for the opening of any of the terms or sittings of the Supreme Court, provided for by the fourteenth section of this Act, such business may be continued into such term and concluded therein, in like manner as if the same had been commenced in either of the terms provided for by the said last-named section. Notwithstanding anything contained in the fourteenth section of this Act, a term or session of the Supreme Court, directed by proclamation, may be held during the whole or any part of the periods during which post-terminal sittings are directed to be held.

CIRCUITS OF THE SUPREME COURT.

**16.** There shall be circuits of the Supreme Court held in the northern and southern districts of this colony, at such times and places, and under such conditions as the Governor by proclamation shall from time to time appoint. Each circuit shall be presided over by one of the Judges in rotation, unless they shall otherwise arrange.

**17.** All persons charged with crimes cognizable by the Supreme Court in St. John's, before one Judge, may be tried anywhere before the Supreme Court on circuit, although the alleged offence may have been committed outside of the territorial limits of such circuit.

**18.** In criminal cases the Judge sitting in the Supreme Court on circuit may reserve questions for argument, or direct motions in arrest of judgment, to be heard before the Supreme Court in St John's, where the decision shall be final and of the same effect as if the case had been originally instituted there.

**19.** In criminal and civil causes and matters on circuit, witnesses shall be liable to be summoned from any part of the colony and its de-

pendencies, in the same manner, and with like effect, as if they were within the limits of the Circuit.

**20**. The Supreme Court on Circuit, before which any person shall be convicted of any offence, and upon such conviction shall be sentenced to imprisonment, with or without hard labour, or any Judge thereof, may order and direct that the whole or any portion of such imprisonment shall take place in any gaol or prison in this Island, although the same may not be within the limits of the Circuit; and a certified copy of the sentence of the Court, or of any order for such imprisonment, under the hand of a Judge or the Clerk of such Court, shall be a sufficient warrant and authority to all sheriffs, gaolers and constables, respectively, for the removal from one district to another of any such convict, and for the carrying into execution of such sentence of imprisonment or order, as the case may be.

**21**. At any time after sentence a prisoner may, by order of the Governor or a Judge of the Supreme Court, be removed from one gaol to another, when and as often during the currency of the sentence as may be deemed expedient for the ends of justice.

**22**. Any party to any action or suit on Circuit shall have a rule *nisi* on all points raised by such party, returnable before the Supreme Court in St. John's at its next sitting there; or may have a special case, demurrer, probate or equity suit, or any information, action or suit relating to the revenue reheard: Provided that the presiding Judge may require sufficient security to abide the final judgment and costs.

**23**. In any action in the Supreme Court on Circuit, if a jury cannot be had for the trial of the cause, the presiding Judge shall have power to try the same without a jury: Provided that the judgment of such presiding Judge shall be subject to review by the Supreme Court in Saint John's upon rule for a new trial, non-suit, or otherwise, in the same manner in all respects as the verdict of a jury, subject to such condition as the presiding Judge may think just.

### Officers of the Supreme Court.

**24**. There shall be a Chief Clerk and Registrar of the Supreme Court at St. John's, to be appointed by the Governor in Council, who shall perform such duties as are performed by the Master, Registrar, Accountant-General, or Prothonotary of the Supreme Court of Judicature in England, or by such officers as now in such Court perform those duties, and all other such duties as the Chief Clerk and Registrar has been in the habit of performing and now performs: Provided that the said Chief Clerk and Registrar shall not, whilst in the occupation of the said office, practice or act as Barrister, Attorney, Advocate, Solicitor, Proctor, Conveyancer, or Notary Public, or demand or receive any fee or compensation in connection with the last-mentioned offices.

**25.** The Chief Clerk and Registrar of the Supreme Court shall give such security as shall be approved of by the Supreme Court, for the safe keeping of and accounting for all monies paid into his hands by order of the Court.

**26.** The Governor in Council may appoint Assistant Clerks of the Supreme Court, who shall have power, in the absence of the Chief Clerk of the said Court, and at such other times as shall be declared necessary by the Supreme Court under general rules, to discharge the duties of the office of the said Chief Clerk: and the duties heretofore performed by the Clerks of the Supreme Court on Circuit may be discharged by the said Assistant Clerks, or any of them.

**27.** The said Assistant Clerks shall give such security for the faithful performance of their duties, as shall be approved of by the Supreme Court.

**28.** There shall be a Crier and Tipstaff of the Supreme Court, whose appointment shall be in the Judges.

**29.** There shall be Commissioners of the Supreme Court for taking affidavits, for issuing mesne process, and for taking bail within this Island and its dependencies, who shall be appointed under the seal of the Supreme Court and under the hand of the Chief Justice, or, in his absence, of the senior Judge.

**30.** It shall be lawful for the Chief Justice, and, in his absence, for the Senior Judge of the Supreme Court, to grant and cause to be issued, under the seal of the said Court, Commissions, addressed to persons resident in any place without the jurisdiction of the said Court, authorising and empowering such persons to administer oaths, and to take affidavits, solemn affirmations, statutory declarations, and acknowledgments of deeds and other documents, for use or proof within this island and its dependencies, and to do and perform all and singular the acts, matter and things, which are now within the authority of a Commissioner of affidavits residing within the jurisdiction aforesaid, save and except the issue of process.

**31.** A Commissioner appointed by virtue of the foregoing section, before acting in anywise under the said Commission, shall make a declaration before a Notary Public, or before the Mayor, Chief Magistrate, British Consul, Vice-Consul or Consular Agent, of or near the city, borough or place, where such Commissioner resides, who shall certify the same under his hand and seal, which declaration shall be in the handwriting of the Commissioner, and subscribed by him, and shall be in the form as in the schedule A hereto appended; and such certificate and declaration shall, within three months of such appointment, and prior to the judicial recognition of any of the acts of such Commissioner, be filed in the office of the Chief Clerk and Registrar of the Supreme Court.

**32.** When such declaration and certificate shall have been filed, as aforesaid, all acts, matters and things done by such Commissioner, by virtue of such appointment, shall be sufficiently verified by his signature, without further proof or authentication, as fully as if the said Commissioner were residing within the jurisdiction of the said Court.

**33.** The provisions of the four preceding sections of this chapter, as to proof and acknowledgment of deeds, conveyances and other assurances, shall be construed as cumulative with section eight of chapter 80 of these Consolidated Statutes, entitled "Of the Registration of Deeds," and not as in anywise repealing the same or conflicting therewith.

**34.** The fees to be taken by Commissioners abroad shall be as in the schedule B, hereto appended.

### Trial and Procedure.

**35.** Subject to rules of Court, the trials and procedure in all causes, whether of a legal or equitable nature, shall be as nearly as possible the same, and the following provisions shall prevail:—

(1.) In actions of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, the plaintiff may, in his notice of trial, and the defendant may, upon giving notice within two days from the time of the service of notice of trial, or within such extended time as the Court or a Judge may allow, signify his desire to have the issue of fact tried by a Judge with a jury, and thereupon the same shall be so tried.

(2.) Causes or matters which, before the passing of this Act were heard or determined by or before the Equity side of the Supreme Court, shall be tried and determined by a Judge without a jury, unless the Court or a Judge shall otherwise order.

(3.) The Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of this Act could, without consent of parties, have been tried without a jury.

(4.) The Court or a Judge may direct the trial without a jury, of any cause, matter or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their or his opinion, conveniently be made with a jury.

(5.) In any other cause or matter, upon the application within two days after notice of trial has been given, of any party thereto,

for a trial with a jury of the cause or matter or any issue of fact, an order shall be made for a trial with a jury.

(6.) In every cause or matter, unless under the provisions of sub-section (5) of this section a trial with a jury is ordered, or under sub-section (4) of this section either party has signified a desire to have a trial with a jury, the mode of trial shall be by a Judge without a jury: Provided that in any such case the Court or a Judge may at any time order any cause, matter, or issue to be tried by a Judge with a jury.

(7.) The verdict or finding of the Judge, by whom any issue is tried or damages assessed, shall have the like effect as the finding of a jury.

(8.) Where, in any action both legal and equitable issues are raised, they shall be heard and tried at the same time, unless the Court or a Judge thereof, or the Judge presiding at the trial, otherwise directs.

(9.) Where, upon the trial of any action, any question of fact or of law arises for the determination of the presiding Judge, he may, of his own motion, or by consent of parties, reserve the giving of his final decision on the question so raised to a future day, not later than sixty days from the day of such reservation, and his decision, whenever given, shall be considered as if given at the time of the trial. Such decision shall be filed with the Clerk of the Court where the cause was tried, and it shall be the duty of the Clerk immediately to give notice in writing to all the parties to the cause or their respective attorneys, that such decision has been filed, and each of the parties shall have and exercise, within twenty days from the service of such notice, all such rights as he possessed or might have had or exercised if judgment had been given on the trial of the cause

(10.) Upon any trial by a jury, where the Court or the presiding Judge otherwise directs, it shall not be lawful for such jury to give a general verdict, and it shall be the duty of such jury to give a special verdict if the Court or presiding Judge so directs; and unless the Court or the presiding Judge otherwise directs, the jury may give either a general or a special verdict, but this sub-section shall not apply to actions of libel.

(11.) Upon a trial by jury, in any case except an action for slander, libel, malicious prosecution, false imprisonment, or breach of promise of marriage, the Judge, instead of directing the jury to give either a general or special verdict, may direct the jury to answer any questions of fact stated to them by the Judge for the purpose; and in such case the jury shall answer such

questions, and shall not give any verdict, and on the finding of the jury upon the questions which they answer, the Judge shall enter the verdict, and the verdict, so entered, shall be as effectual as if the same had been the verdict of the jury. And on the trial of any such case counsel may require the Judge presiding to submit to the jury any pertinent or relevant question raised by any of the issues or necessary to be answered by the jury in order to a complete determination of all matters involved in the case; and in the event of any presiding Judge refusing to put to the jury any question required by counsel to be so submitted, such refusal may be used as a ground for a new trial.

(12.) Subject to the provisions of the preceding sub-sections of this section, the Court or a Judge may, in any cause or matter, at any time, or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one or more issues of fact be tried before any other or others.

(13.) Nothing in this section or sub-sections shall affect any proceedings under any of the provisions of chapter twenty of the Consolidated Statutes (first series), relating to arbitration.

ARBITRATION.

**36.** If it be made to appear at any time after the issuing of the writ, to the satisfaction of the Court or a Judge, upon the application of any party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, the Court or Judge may, upon such application, if they or he think fit, decide such matter in a summary manner, or order that such matter either wholly or in part be referred to one or more arbitrators appointed by the parties, or if the parties cannot agree in the choice of arbitrators, to an officer of the Court, or some other person or persons, upon such terms as to costs and otherwise as the Court or Judge shall think reasonable; and the decision or order of the Court or Judge, or the award or certificate of such referee or referees, shall be enforceable by the same process as the finding of a jury upon the matter referred.

**37.** If it shall appear to the Court or a Judge that the allowance or disallowance of any item in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury, or by a judge, the Court or Judge may direct a case to be stated, or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator or officer as conclusive.

**38.** The arbitrator or officer, upon any compulsory reference under this chapter, or upon any reference by consent of parties, where the submission is or may be made a rule of order of the Court, may, if he shall think proper, and if it be not provided to the contrary, state his award as to the whole or any part thereof, in the form of a special case, for the opinion of the Court; and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the Court.

**39.** If, upon the trial of any issue of fact by a Judge under this chapter, it shall appear to the Judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, he may, at his discretion, order that such matter of account be referred to an arbitrator or arbitrators appointed by the parties, or in the event of their disagreement, as aforesaid, to an officer of the Court, or some other person or persons, upon such terms as to costs and otherwise as such Judge shall think reasonable, and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and the Judge may proceed to try and dispose of any other matter in question not referred in like manner as if no reference had been made.

**40.** The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner and subject to the same rules and enactments as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of Court or a Judge's order.

**41.** In any case where reference shall be made to arbitration as aforesaid, the Court or Judge may, at any time, and from time to time, remit the matters referred, or any or other of them, to re-consideration and re-determination of the said arbitrator, upon such terms as to costs and otherwise as the Court or Judge may seem proper.

**42.** All applications to set aside any award made on a compulsory reference under this chapter, shall be made within seven days after publication of the award to the parties, whether made in vacation or term; and if no such application be made, or if no rule be granted thereon, or if any rule granted thereon be afterwards discharged, such award shall be final between the parties.

**43.** Whenever the parties to any deed or instrument in writing, or any of them, have agreed or shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person claiming through or under him, shall nevertheless commence an action at law or suit in equity against the other party or parties or any of them, or against

any person claiming through or under him or them or any of them, the Court or a Judge may, on application by the defendant or defendants, or any of them, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of bringing such action or suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to directing a reference as hereinbefore provided as to the Court or Judge may seem fit; provided that any rule or order may at any time afterwards be discharged or varied as justice may require.

**44.** If in any case of arbitration the document authorizing the reference provide that the reference shall be to a single arbitrator and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, or if any appointed umpire or arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one, then and in every such instance any party may serve the remaining parties or arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator, respectively; and if within seven clear days after such notice shall have been served, no arbitrator, umpire, or third arbitrator be appointed, a Judge of the Supreme Court may, upon summons to be taken out by the party having served such notice as aforesaid, appoint an arbitrator, umpire, or third arbitrator, as the case may be; and such arbitrator or third arbitrator, respectively, shall have a like power to act in the reference and make an award as if he had been appointed by consent of all parties.

When the reference is or is intended to be to two arbitrators, one appointed by each party, either party, in case of the death, refusal to act, or incapacity of any arbitrator appointed by him, may substitute a new arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied; and if, on such a reference, one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties, as if the appointment had been by consent: provided,

however, that the Court or a Judge may revoke such appointment on such terms as shall be deemed just

**45**. When the reference is to two arbitrators, and the terms of the document authorizing it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

**46**. The Court or a Judge may, upon sufficient cause, and from time to time extend the time for making any award under this chapter, notwithstanding that the time originally fixed may have elapsed.

**47**. When any award made on any such submission, document, or order of reference aforesaid directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party either forthwith or at any future time, or that any such party is entitled to the possession of any such lands, or tenements, the Court may order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference to deliver possession of the same to the party entitled thereto pursuant to the award; and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue and possession shall be delivered by the Sheriff, as on a judgment in ejectment.

**48**. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of Court, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of Court.

**49**. The power and authority of any arbitrator or umpire shall not be revocable by any party to the reference without leave of the Court or a Judge, and the arbitrator or umpire shall and is hereby required to proceed with the reference notwithstanding any such revocation, and to make such award, although the person making such revocation do not afterwards attend the reference.

**50**. Where a compulsory reference to arbitration has been ordered, any party to such reference may appeal from the award or certificate of the arbitrator upon any question of law; and on the application of any party the Court may set aside the award on any ground on which the Court might set aside the verdict of a jury. The Court or Judge shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or referee, or make any

order with respect to the award or certificate, or all or any of the matters in dispute as may be just.

ATTACHMENT FOR DEBT.

**51.** An original writ of attachment may issue out of the Supreme Court upon the filing of a sufficient affidavit, to be made by the plaintiff, or some one on his behalf, shewing the defendant to be justly and truly indebted to the plaintiff in a liquidated amount of twenty dollars or upwards, in a cause of action to be therein set forth; but the Court or a Judge thereof may authorize the issuing of a writ of attachment where the debt or damages are unliquidated, upon sufficient cause to be shewn in that behalf.

**52.** No property, debts or effects, regularly attached under original alias or pluries writs of attachment, shall be released except by the termination of the suit in favor of the defendant, or otherwise by operation of law, until the defendant, or some one on his behalf, shall have given bond with two sufficient sureties to the Sheriff in double the sum sworn to, conditioned as in the form in schedule C, or until he have deposited with the Sheriff, to abide the order of the Court in the cause, an amount equal to the sum sworn to, and such amounts for costs as is hereafter provided.

**53.** Such bail-bond shall stand and be security to the plaintiff to abide the final judgment in the cause; and upon a breach occurring in the condition thereof, the same shall be assigned by the Sheriff to the plaintiff, who may sue thereon in his own name; and if by reason of the insufficiency of such bond, or of the sureties therein the plaintiff shall fail to recover the amount of the sum sworn to, and such further sum for costs as aforesaid, or the value of the property attached, he may recover any deficiency in such amounts in an action on the case against the Sheriff.

**54.** When the goods or effects attached under any process of the said Court shall be of a perishable nature, or be such as either from the expense of holding the same, or from other circumstances, may considerably deteriorate in value before judgment can be obtained in the action or suit in which such goods or effects may have been attached, and good and sufficient bail to satisfy the judgment, order, or decree of the said Court shall not have been put in by the defendant or defendants, the Court or a Judge thereof may, on the application of any plaintiff or defendant, order the immediate appraisement and sale of such goods or effects, or of a sufficiency thereof to satisfy the debt and costs, and direct the proceeds thereof to be paid into Court, to abide the further order, judgment, or decree of the Court in such action or suit.

**55.** So often as any goods, debts or effects of any defendant in any action or suit now pending or hereafter to be brought in the said Court,

have been or shall be attached in the hands of any third person, such goods, debts or effects shall be paid into Court or delivered to the Sheriff, as the case may be, to abide the order, judgment or decree of the said Court; and for the purpose of ascertaining the nature and amount of such goods, debts or effects, the Court or a Judge thereof may, on the application of either party to the suit, summon such third person, or his agent, or, in case of a corporation or company, an officer thereof, to appear before such Court or Judge, or an officer of the Court, to be examined upon oath, or cause such third person to be examined on oath, under rule, order or commission, and thereupon make order for the payment into Court, or delivery to the Sheriff, as the case may be, of such goods, debts or effects, and for the realization by the master, or an officer of the Court, by action or suit (if necessary), in his own name or otherwise, of such effects as may consist of choses in action, and enforce such order by process of contempt, or by execution against the garnishee, to levy the amount due from or obtain delivery of the property, or the value thereof, in the hands of such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order: Provided that no such attachment as aforesaid shall be deemed to operate on or to affect any contract executory, upon which at any day after the service of the warrant of attachment any sum of money shall or may accrue or become payable to any defendant for or on account of any work, labour, or service to be executed, performed, or completed by such defendant at any time after the service of such warrant of attachment upon the bailee; nor upon any moneys, goods, debts, or effects, in and over which such defendant shall not have at the time of the service of such warrant of attachment a then present interest and disposing power.

**56** When any debt which has been or shall be so attached as aforesaid shall be payable in goods to be specified by the defendant, to whom such debt shall be owing, and such defendant shall neglect or refuse to specify the same previously to or at the time of such examination as aforesaid, such goods to the amount of the debt so attached shall be delivered to the Sheriff as the plaintiff in any such action or suit shall direct.

**57**. If the garnishee disputes his liability, the Court or Judge may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined, or by order in a summary way.

**58**. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt or property sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or a Judge may order such third person to appear, and state the nature and particulars of his claim.

**59**. After hearing the allegations of any third person under such order and of any other person whom by the same or any subsequent order the

Court or a Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order attachment for contempt to issue, or execution to issue as aforesaid, or any issue or question to be tried or determined according to the preceding sections, and may bar the claim of such third person, or make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or Judge shall think just and reasonable.

60 When any lands or tenements, or the interest of any person therein, shall be attached by virtue of any process of the Court, the Sheriff, his deputy or bailiff, shall serve notice of such attachment on the tenants, occupiers, or owners of such lands or tenements; and thereafter the rents, profits, or annuities to which such person may be entitled from such lands or tenements, whether then in arrear or thereafter to grow due until final judgment, or so much thereof as shall be sufficient to satisfy the plaintiff's demand with reasonable costs, shall (after deducting thereout ground rents, if any), be paid to the Sheriff, to abide the order, judgment, or decree of the said Court, and the like proceedings may be had for ascertaining the nature and amount of such rents, profits, or annuities, and for enforcing payment of the same according to the orders of the Court, as are hereinbefore prescribed with respect to goods, debts, or effects, attached in the hands of a third person.

61. Any party who shall have obtained judgment may issue a writ of *fieri facias* thereupon, and cause warrants under such writ of *fieri facias* to be placed in the hands of any party having the custody or control of any moneys, goods, debts, or effects of the defendant or plaintiff, as the case may be; and the like proceedings shall be had to examine persons holding the said moneys, goods, debts, or effects, to determine liabilities and rights of property, to cause the said money to be paid into Court, or the said goods to be sold, and where such effects shall consist of choses in action, to cause the same to be realized, and the proceeds paid into Court, under such warrants as are had under warrants laid in virtue of mesne process.

62. Property, debts and effects, attached under original or final process, shall abide the judgment, order, or decree of the said Court, in the cause in which they have been attached.

63. Payment or delivery made by, or execution levied upon, the garnishee under any such proceeding as aforesaid, shall be a valid discharge to him as against the debtor, liable under a judgment or order to the amount paid or levied, or the property delivered, although such proceeding may be set aside, or the judgment or order reversed.

64. The costs of any application for an attachment of debts or property and of any proceedings arising from or incidental to such application,

shall be in the discretion of the Court or a Judge, and may be added to and recovered with the costs in the action, or on the judgment, or on the execution against the garnishee, or otherwise, as the Court or Judge may direct.

**65.** The Sheriff shall, in all cases of attachment by original process, in addition to the amount sworn to, attach for costs as follows:—Where the sum sworn to does not exceed fifty dollars, the sum of fifteen dollars; where it exceeds fifty dollars and does not exceed two hundred dollars, the sum of twenty-five dollars; where it exceeds two hundred dollars and does not exceed four hundred dollars, the sum of thirty dollars; and where it exceeds four hundred dollars, the sum of fifty dollars; and in cases of attachment, under execution, in addition to the amount of the judgment, he shall attach for the costs of execution

**66.** In all actions, commenced by capias or attachment, the plaintiff shall proceed to trial in the term first after the issuing of the writ, and if issued during such term, to judgment and execution within ten days after trial unless prevented by the action of the defendant; and in default of his so doing, the Court, or a Judge thereof, as the case may require, may cause the defendant or the property attached, to be released, or the bail bond to be cancelled: provided that the Court, or a Judge may, upon sufficient cause, extend the time for any proceeding under this section.

**67.** The working tools and implements of trade of any person, his fishing skiff or punt, the necessary cooking apparatus, the bedding and wearing apparel of himself and his family, shall not in any case be liable to, or be taken under, attachment or execution.

### Imprisonment for Debt.

**68.** No person shall be arrested and held to bail in any civil action, on either original or final process, except in the cases hereinafter provided.

**69.** In case any party or plaintiff, being a creditor, or having a cause of action against any person not privileged from arrest, shows either before or after action brought, and before judgment, by the affidavit of himself or of some other person, to the satisfaction of a Judge of the Supreme Court, that such party or plaintiff has a cause of action against such person to the amount of fifty dollars or upwards, or that he has sustained damage to that amount, and also by affidavit, shows such facts and circumstances as satisfy the said Judge that there is good and probable cause for believing that such person has made, or is about to make, some disposition of his property or some part thereof, or is about to quit this colony with intent to defraud his creditors generally, or the said party in particular, or is about to quit this colony, and that his absence will materially prejudice the prosecution of the action, or is possessed of means of

payment, of which he has control, and which he withholds from his creditors, then such Judge may, in any such case, by a special order, direct that the person against whom the application is made shall be arrested under a writ of *Capias ad respondendum* and held to bail to the Sheriff, or required to give security to the plaintiff, in such sum as the Judge thinks fit. The bail to the Sheriff shall be, that the defendant shall pay the judgment and costs, or that he shall be rendered to the Sheriff at any time after arrest, and at latest, within four days after final judgment shall have been signed. The bail taken shall be deemed sufficient, unless the plaintiff, within two days after receiving particulars of the bail, give notice that he objects to their sufficiency, and within two days thereafter obtain an appointment from a Judge or a Master, or other person appointed by the Judge to determine the sufficiency of the security. Upon the bail being held sufficient, the Sheriff shall be relieved from further responsibility, and the bond shall be assigned to the plaintiff, who may sue thereon after breach in his own name.

**70.** Where the defendant has not been held to bail, or given security as aforesaid, if the plaintiff in an action, by the affidavit of himself or of some other person, shows, to the satisfaction of a Judge, that he has recovered judgment against the defendant in the amount of $50, and upwards, and also by affidavits shows such facts and circumstances as satisfy the Judge that there is good and probable cause for believing that the defendant has made or is about to make some disposition of his property, or of some part thereof, or is about to quit this colony, with intent to defraud his creditors generally, or the said party or plaintiff in particular, or is about to quit this colony, and that his absence will materially prejudice the recovery of the judgment, or is possessed of means of payment, of which he has control, and which he withholds from his creditors, then such Judge may, by special order, direct that a *capias ad satisfaciendum* be issued against such defendant.

**71.** The detaining creditor or detaining creditors in civil actions shall be liable to pay to the Sheriff such sum, and in such manner as by any general rule of Court, or for the purpose of the particular case, may be prescribed by the Court or a Judge, for the maintenance of a debtor while under arrest, and in default of such payment the debtor shall be discharged from custody in such action; provided that, in the event of final judgment being given in favor of the detaining creditor, then, on sufficient cause being shown to the satisfaction of the Supreme Court or a Judge thereof, the amount so paid to the Sheriff may be added to and form part of the costs in the cause, with like remedy for recovery thereof, as in other cases: provided that this section shall not apply while a debtor is under arrest or in custody under sentence or order of a Court or Judge sitting in Insolvency.

**72.** Any person arrested under this Act, may apply to the Court or a Judge thereof for his discharge from custody, and, upon sufficient cause

shown, the Court or Judge may order such discharge or make such other order or orders for security, time of payment, or otherwise as may seem meet, with or without costs.

**73.** A writ for arrest issued under this Act must be executed within one calendar month from its date, and not after, unless further order be made, when it shall continue in force for a month longer, or such less time as the order may direct.

PARTITION.

**74.** Where property is held in joint-tenancy, co-parcenary or in common, any party wishing a partition thereof may sue out a writ of summons, with statement of claim, against all persons who have a joint title or possession with them of such property, and refuse to make a fair partition of it, claiming a partition thereof.

**75.** Upon the said writ and claim being duly returned and filed, with an affidavit of the service thereof, and upon default of appearance of the parties to whom it shall be addressed, the Court or Judge shall proceed to examine into the demandant's title, and the quantity or proportion of the property to which he is entitled, and accordingly as they shall find the demandant's right and proportion to be, they will for so much give judgment by default, and give an order for partition whereby such part and proportion shall be set out severally. Such order may be directed to the Sheriff and a jury or to one or more referees to ascertain, assign and deliver the several parts or shares in such manner as the Court or Judge shall direct.

**76.** When this order shall have been executed, after eight days' notice given to the occupier or tenant of the premises and returned, final judgment will be entered; and the same shall be good and conclude all persons whatsoever, after notice as aforesaid, whatever right or title they have or may at any time claim to have in any of the property mentioned in the order, unless such tenant or person concerned, or either of them, against whom or their right and title such judgment by default is given, shall within three months, or in case of infancy *non sane memoriæ* or absence out of this island within one year after his return or the termination of such inability, apply to the Court or Judge by motion, and shew a good and probable matter in bar to such partition; in which case the Court or Judge will set aside such judgment, and the cause shall proceed as if no judgment had been given. But if the Court or Judge upon hearing thereof shall adjudge for the first demandant, then the said first judgment shall stand confirmed, and shall be good against all persons whatsoever, except such other persons as shall be absent or disabled as aforesaid, and the person so appealing shall be awarded thereupon to pay costs.

**77.** Should any person described in the last section, and within the time or times as there stated, come into Court, and admitting the de-

mandant's title show an inequality in the partition, the Court or Judge shall award a new partition to be made in the presence of all parties concerned (if they will appear) notwithstanding the return and filing upon the record of the former; and such second partition shall be good and firm forever against all persons not laboring under any of the inabilities herein previously mentioned.

**78.** In the event of the party against whom the writ shall have been issued appearing, he may either confess the action or plead that the demandants do not hold together with him. In the first case an order like that before described, with such alterations as may be necessary, will issue immediately; in the second case the truth of the tenant's plea must be tried within a convenient time, and if judgment shall be against him on that point the demandant will then be entitled to an order for partition.

**79.** The foregoing rules so far as they apply to the partition of property of infants or of persons of unsound mind, held in joint-tenancy, coparcenary or in common shall be subject to the following provisions, viz.: the Court or Judge may of its own motion or upon that of any party to a writ of partition or of a guardian or next friend of an infant, or of the guardian or next friend of a person of unsound mind, direct the guardian or next friend of such infant or person of unsound mind to be made a party to such writ, and in such cases the judgment to be had shall be as final and binding upon such infant or person of unsound mind, his representatives and estate, as upon other parties to the proceedings. If there be no such guardian existing, one may be appointed by the Court or Judge.

**80.** The order of partition, and partition and judgment thereon shall be registered in the registry of deeds.

**81.** If it appears to the Court or Judge that by reason of the nature of the property to which the action relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties or of any other circumstances, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court or Judge may, on request of any of the parties interested, and, notwithstanding the dissent or disability of others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

**82.** If the party or parties interested individually or collectively to the extent of one moiety or upwards in the property to which the action relates request the Court or Judge to direct a sale of the property and a distribution of the proceeds instead of a division between or among the parties interested, the Court or Judge shall, unless for good reasons to the contrary, direct a sale of the property accordingly, and give all necessary consequential directions.

**83.** If any party interested in the property to which the suit relates requests the Court or Judge to direct a sale of the property and a distribution of the proceeds, instead of a division of the property between or among the parties interested, the Court or Judge may, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property and give all necessary or proper consequential directions; and in case of such undertaking being given, the Court or Judge may order a valuation of the share of the party requesting a sale in such manner as the Court or Judge thinks fit, and may give all necessary or proper consequential directions.

**84.** On any sale under this Act, the Court or Judge may allow any of the parties interested to bid at the sale, on such terms as to non-payment of deposit, or as to setting off or accounting for the purchase money or any part thereof, instead of paying the same, or as to any other matters, as the Court or Judge may deem reasonable.

**85.** If the interest of any party in any property, the subject of partition and sale, shall consist of, or be a rent charge or annuity, orders or decrees may be made for ascertaining its value, either as a share of or charge upon the property itself, or upon any part or parts thereof, or of the proceeds thereof, and for distributing, settling and providing for the application of the same, as if the interest of such person were a share of the property itself.

**86.** Any person who may maintain an action for partition may proceed against any one or more of the parties interested without serving the other or others (if any) of those parties, and it shall not be competent to any defendant in the action to object for want of parties, and at the hearing of the cause the Court or Judge may direct such enquiries as to the nature of the property and the persons interested therein, and other matters, as it thinks necessary or proper, with a view to an order for partition or sale being made on further examination; but all persons interested shall be served with notice of the decree or order on the hearing, and after such notice shall be bound by the proceedings as if they had been originally parties to the proceedings, and all such persons may have liberty to attend the proceedings, and any such shall be deemed parties thereto.

**87.** In an action for partition the Court may make such order as it thinks just respecting costs.

**88.** Where any order or decree shall be made for the specific performance of a contract concerning any lands, or for the partition or exchange of any lands, or generally when any judgment, order or decree shall be made for the conveyance or assignment of any lands (either in cases arising out of the doctrine of election or otherwise), the Court or Judge may declare that any of the parties to the action wherein such

decree is made are trustees of such lands or any part thereof, or declare concerning the interests of unborn persons who might claim under any party to the said action, or under the will or voluntary settlement of any person deceased who was, during his lifetime, a party to the contract or transaction concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees thereof, and thereupon it shall be lawful for the Court or Judge to make such order or orders as to the estates, rights and interests of such persons born or unborn, as the Court might make concerning the estates, rights and interests of trustees, born or unborn.

**89**. The Court, or Judge thereof, may make all such decrees and orders for the appointment of trustees and for the holding, application and investment of property and moneys, and the proceeds and produce thereof, as in any case arising under the foregoing sections, may be required to give effect to the provisions thereof.

Costs.

**90**. Subject to the provisions of this Act, the costs of, and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge; provided that nothing herein contained shall deprive an executor, administrator, trustee or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon: Provided that where any action, cause, matter or issue is tried with a jury, the costs of such action, cause, matter or issue shall be allowed in the same manner, and according to the same rules as before the passing of this Act.

**91**. If any action be commenced in the Supreme Court for any cause over which the Central District Court or the Harbour Grace District Court has jurisdiction, and a verdict shall be found or judgment given for any sum not exceeding fifty dollars, the plaintiff shall have judgment to recover such sum only, and no costs, unless the Court or a Judge thereof shall certify on the back of the record, that the action was fit to be brought in the Supreme Court.

**92**. When issues in fact and law are raised upon a claim or counterclaim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event.

**93**. If a cause be removed from an inferior Court, having jurisdiction in the cause, the costs in the Court below shall be costs in the cause unless the Supreme Court or Judge thereof shall otherwise order.

**94**. Where, upon the trial of any cause or matter, it appears that the same cannot conveniently proceed by reason of the solicitor for any party

having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or Judge, and which, according to the practice, ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or Judge shall think fit to award.

**95.** In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the Court or a Judge shall direct. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.

**96.** Where a bond is to be given as security for costs, it shall, unless the Court or a Judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the Court.

**97.** If in any case it shall appear to the Court or a Judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or Judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require), why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The Court or Judge may, if they or he think fit, refer the matter to a taxing officer for inquiry and report, and direct the solicitor in the first place to show cause before such taxing officer. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court or Judge may direct.

**98.** When the Court or a Judge appoints one of the solicitors of the Court to be guardian *ad litem* of an infant or person of unsound mind, the Court or Judge may direct that the costs to be incurred in the performance of the duties of such officer shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.

**99.** A set-off for damages or costs between parties may be allowed, notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought.

**100.** Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

**101.** One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase, (if any), shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary.

**102.** Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian.

**103.** Upon interlocutory applications where the Court or a Judge shall think fit to award costs to any party, the Court or a Judge may, by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid.

**104.** As to inspection of documents under Order XXVIII, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

**105.** As to taking copies of documents in possession of another party, or extracts therefrom, under rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of five cents per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

**106.** Where any petition in a cause or matter is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be five dollars. The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this section is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition, without appearing thereon, he is to be allowed a fee not exceeding the amount aforesaid.

**107.** The Court or Judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at chambers, and whether the same is objected to or not, direct the costs of any pleading, affidavit, evidence, notice, account, statement, or other document, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains

vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before and dealt with by the Court or Judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any decree or order), for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

**108.** In any case in which, under the last preceding section, or any rule of the Court, or by the order or direction of the Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

**109.** Where any party appears upon any application or proceeding in Court or at chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend he is not to be allowed any costs for such appearance unless the Court or Judge shall expressly direct such costs to be allowed.

**110.** The taxing officers of the Supreme Court shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been or are by general orders directed to be performed by the Chief Clerk and Registrar, or Master, or other officers of the Court, and shall, in respect thereof, have such powers and authorities as previous to the commencement of this Act, were, or by general orders are, vested in any such officers, including examining witnesses, directing production of books, papers and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a Judge.

**111.** Where an account consists in part of any bill of costs, the Court or Judge may direct the taxing officer to assist in settling such costs, not

being the ordinary costs of passing the account of a receiver, and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the same fees shall be payable in respect thereof, as if the same had been referred to the taxing officer by an order; and he shall return the same, with his opinion thereon, to the Court or Judge by whose direction the same were taxed.

**112.** The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall, in his discretion, consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

**113.** When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

**114.** As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party.

**115.** As to any work or labor properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labor as have heretofore been allowed.

**116.** Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment.

**117.** Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

**118**. Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the Court or a Judge, upon the application of the party alleging himself to be aggrieved, prohibits the taxation of such costs.

**119**. Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the proper taxing officer, and give notice, with a copy of the bill, of his having so done to the other party. And at or before the expiration of two days, or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the costs or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs: but where he makes no such tender or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs.

**120**. Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order.

**121**. The allowances in respect of fees to any accountants, merchants, engineers, actuaries, and other professional or scientific persons to whom any question is referred, shall be regulated by the taxing officer, subject to appeal to the Court or Judge, whose decision shall be final.

**122**. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances; and where a party is entitled to sign judgment for his costs, the taxing officer, in taxing the costs, may allow a fixed sum for the costs of the judgment.

**123**. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to in writing by such party at the taxation, may, within four days from the date of the certificate or allocatur, or such other time as the Court or Judge may allow, apply to a Judge at chambers for an order to review the taxation as to the same item or part of an

item, and the Judge may thereupon make such order as the Judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid, unless under special circumstances by leave of the Court or Judge the taxation is re-opened.

**124.** Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing office, and no further evidence shall be received upon the hearing thereof, unless the Judge shall otherwise direct.

**125.** Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter.

**126.** Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his name and address for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.

**127.** The taxing officer shall have power to limit or extend the time for any proceeding before him, and where, by any general order, or any order of the Court or a Judge, a time is appointed for any proceeding before or by a taxing officer, unless the Court or Judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose, unless required for any special purpose.

*Costs between Solicitor and Client.*

**128.** It shall not be necessary for a solicitor to take an action by writ against his client for bills of costs in any cause or matter, but he may furnish his bill and obtain an appointment for taxation before a taxing officer of the Court, of which notice shall be given to the client at least three days before the time appointed for taxation, and the taxation shall proceed as in other cases.

**129.** The filing of the taxed bill, with the taxing officer's allocatur or certificate, shall have the same effect as a judgment; and execution may issue thereon in the same way.

**130.** A client furnished with a bill of costs may have the same taxed upon an appointment in manner and with the effect aforesaid.

**131.** If a greater amount than one-fifth shall be taxed off the account the solicitor shall bear the expense of taxation.

**132.** Costs generally shall be taxed between solicitor and client according to the table of costs under Appendix L to this Act, with the addition of reasonable fees for retainers, consultations, correspondence, and for any special labor or expense which from the peculiar circumstances of the case or through the instructions of a client, may have been incurred, although not taxable between party and party and subject to deduction for costs unnecessarily or negligently incurred.

**133.** If an action by writ shall have been taken for fees or costs, the same proceedings may at any time after its issue be had by either party for taxation and judgment thereon as are provided in the foregoing rules. There shall be no necessity to have furnished an account or bill of costs more than four days previously to the issue of a writ for the same, nor to give any notice of action other than the furnishing of a bill signed by or on behalf of the plaintiff, and a Judge may dispense with the necessity of delivering a bill before action in cases in which a Judge's order may issue for arrest of the person for debt.

**134.** Counsel may stipulate for payment of their fees, and in such cases the agreed amounts or otherwise reasonable fees due to them may be recovered by action or other proceedings as aforesaid at their suit against solicitors or parties, and in the same manner and subject to taxation as in the case of solicitors. In any case solicitors or parties shall be bound to account to counsel for counsel fees received by them on taxation or otherwise to be recovered either by action or order of a Court or Judge.

**135.** In cases between solicitor and client or between counsel and client in which the bill taxed shall amount to over $25, application may be made to a Judge for revision, subject to costs of such revision as the Judge may order.

### Proceedings for Recovery of Claims ex Contractu against the Government.

**136.** Any person who may have any claim arising *ex contractu* against the Government of this colony, or against any department thereof, may proceed by a petition to the Supreme Court, setting forth as briefly as possible the circumstances of the case and praying such relief as he may

consider himself entitled to. Such petition shall be verified by affidavit, and a copy thereof shall be served upon the Attorney General, or, in his absence, upon the Solicitor General

**137**. The Attorney General, or in his absence, the Solicitor General, shall, within ten days after such service, file an appearance and answer to the said petition, and serve a copy of said answer upon the petitioner or his solicitor.

**138**. In case of default of such appearance and answer, judgment by default shall be signed as in other cases; and upon an appearance and answer being filed and served, the case shall be proceeded with in all respects in the same manner as in other cases to final judgment.

**139**. Upon such judgment being certified to the Colonial Secretary by the Clerk of the Court, the same shall be carried into effect by the Government either by payment of the amount thereof out of the general revenue of the colony, or by the performance of any act that may be therein directed other than the payment of money, or judgment may be enforced by execution against the moneys, lands and effects of the Government as in ordinary cases between party and party.

**140**. Costs shall be allowed to and be recoverable by each party in any such action in the same manner and according to the same scale as in ordinary cases.

**141**. The Court may, upon the application of either party, within four days after judgment, grant a re-hearing of the cause.

**142**. Either party in any such suit may appeal to the Queen in Council in the same manner as in ordinary cases between party and party, under the Royal Charter.

### Inferior Courts.

**143**. Where it is not otherwise provided (and subject to rules of Court) on appeals from inferior jurisdiction to the Supreme Court or any Judge thereof, and upon removals of any matter in which evidence shall have been taken, it shall be competent for the Supreme Court and the Judges thereof to direct the re-hearing of witnesses, or the re-taking of evidence, or the taking of further and other evidence by the Court below and to require the report of all evidence taken and to require the production and examination of a witness already examined, or of any persons who may not have been already examined, and to refer back the case to the Court below for further consideration in whole or in part, and in giving judgment upon any appeal, either to dismiss the same or confirm or reverse the judgment, and to alter, amend or modify the same, and to make any order as to the execution of the judgment as may be deemed just, and to make in their discretion orders as to costs.

**144.** It shall be lawful for the Judges of the Supreme Court from time to time, by orders to be approved of by the Governor in Council, to extend to the District Courts any of the provisions of this Act and Acts in amendment thereof, with such modifications as may be necessary or desirable.

**145.** Such orders shall be published in the *Royal Gazette* for at least one month before coming into operation in the said District Courts.

PLEADINGS AND PRACTICE

**146.** The schedule hereto, entitled "The Rules of the Supreme Court, 1889," shall be deemed part of this Act, and be the pleading and practice of the Supreme Court thereunder.

**147.** In cases not provided for by this Act, or by the said rules in the schedule hereto, or by rules hereafter made under this Act, the practice and procedure of the Supreme Court of Judicature of England shall, so far as the same are applicable, be the practice of the Supreme Court.

**148.** Causes and matters pending at the time this Act shall come into operation shall be continued and determined as they would have been if this Act had not been passed

RULES OF COURT

**149.** The Supreme Court, or a majority of the Judges present at any meeting for that purpose held, may annul or alter and amend any of the said "rules" contained in the said schedule or any other rule or rules of the Court for the time being in force, and make any further or additional rules of Court for carrying this Act into effect, and in particular for all or any of the matters mentioned in the sub-sections to this section, namely :

(1.) For regulating the sittings of the said Supreme Court and of the Judges of the said Supreme Court in chambers.

(2.) For regulating the pleading, practice and procedure in the said Supreme Court and the rules of law which are to prevail in relation to remedies in causes and proceedings therein.

(3.) For the hearing of appeals and all matters relating to or brought up by writs of certiorari from Courts of Quarter Sessions, District Courts, stipendiary Magistrates, or Justices of the Peace.

(4.) Generally for regulating any matter relating to the practice and procedure of the said Supreme Court, or to the duties of the officers thereof, or to the costs of proceedings, and every other matter deemed expedient for the better attaining the ends of

justice, advancing the remedies of suitors, and carrying into effect the provisions of this Act, and of all Acts now or hereafter in force respecting the said Court.

**150** Where any provisions in respect of the Supreme Court are contained in any statute, rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the practice and procedure of the said Supreme Court, unless, in the case of any Act hereafter passed, this power shall be expressly excluded with respect to such Act or any provision thereof.

**151.** Any provisions relating to the payment, transfer or deposit into or in, or out of, any Court, of any money or property, or the dealing therewith, shall be deemed to be provisions relating to practice and procedure.

**152.** Subject to any order in that behalf, the business to be performed in the said Supreme Court or in the chambers of any Judge thereof, other than that performed by the Judges, shall be distributed among the several officers attached to the said Court, in such manner as may be directed by rules of Court; and such officers shall perform such duties in relation to such business as may be directed by rules of Court; and, subject to such rules of Court, all such officers respectively shall continue to perform the same duties, as nearly as may be, and in the same manner as if this Act had not been passed.

**153.** All rules of Court made in pursuance of this Act after it shall have come into operation, shall be laid before the Legislative Council and House of Assembly within fourteen days next after the next meeting of the Legislature; and if an address be presented to the Governor by either of the said Houses during the said sitting of the Legislature, praying that any of such rules be disallowed, the Governor may thereupon, by order in Council, disallow the same, and the said rules, except so far as disallowed, shall, immediately after the closing of the Legislature, upon being first published in the *Royal Gazette*, come into operation.

INTERPRETATION.

**154.** In the construction of this Act, and of the schedules thereto, and of any rules that may be made thereunder, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have or include the meaning following, that is to say:—

(1.) "Rules" shall include Rules of Court, and both shall include forms.

(2.) "Cause" shall include any action, suit or other original proceeding between a plaintiff and a defendant.

(3.) "Suit" shall include action.

(4.) "Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; but shall not include a criminal proceeding by the Crown.

(5.) "Probate actions" include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business.

(6.) "Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form or proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

(7.) "Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons otherwise than as against any defendant.

(8.) "Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings.

(9.) "Party" shall include every person served with notice of, or attending any proceeding, although not named on the record, and includes a body corporate or politic.

(10.) "Matter" shall include every proceeding in the Court not in a cause.

(11.) "Pleading" shall include every petition or summons, and shall also include the statement in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant

(12.) "Judgment" shall include decree.

(13.) "Order" shall include rule.

(14.) "Oath" shall include solemn affirmation and statutory declaration.

(15.) "Proper officer" means an officer to be ascertained as follows:—

(*a.*) Where any duty to be discharged under this Act, or Rules of Court, is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same;

(*b.*) Where any new duty is under this Act or Rules of Court to be discharged, the proper officer to discharge the same shall be such officer as may from time to time be directed by the Court or a Judge to discharge the same,

(16.) "Master" means a Master of the Supreme Court, now or hereafter to be in commission, or anyone who may be appointed by Court or Judge in order to act as such.

(17.) "Receiver" includes consignee or manager, appointed by or under an order of the Court.

(18.) "Taxing officer" means the Chief Clerk and Registrar, or the Master or person whose duty it is, or who shall be ordered, to tax the costs.

(19.) "This Act" and "the principal Act" shall mean this chapter, and "the Newfoundland Judicature Act, 1889"; "the passing of this Act," and "the coming into operation of this Act," shall mean the coming into force of "the Newfoundland Judicature Act, 1889"; and the expressions "prior to this Act," "before," or "previously to the commencement of this Act," "before this Act came into operation," "heretofore," "existing,' "now in force," "hitherto," "now used," and such like words and phrases, having reference to the time of the passing or commencement of this Act, shall be construed as relating to the date or period when "the Newfoundland Judicature Act, 1889," came into force.

**155.** Unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular.

## SCHEDULE A.

### Declaration of Commissioners Abroad.

I, A. B., of C., in the County (or State, or as the case may be), of D. in E., Solicitor, (or as the case may be), do hereby declare that I will well and truly, to the best of my knowledge, skill and ability, when thereunto required, perform and fulfil the office of a Commissioner of the Supreme Court of Newfoundland, under and by virtue of "the Newfoundland Judicature Act, 1889."

## SCHEDULE B.

### Fees to be taken by Commissioners Abroad.

| | |
|---|---|
| For every affidavit prepared by Commissioner, save as hereinafter mentioned ... ... ... ... ... ... ... | $2 50 |
| For administering every oath on affidavit previously prepared ... | 1 00 |
| For every certificate ... ... ... ... ... ... ... | 1 50 |

For taking acknowledgment of every deed, conveyance or other assurance ... ... ... ... ... ... ... 1 00
For every affidavit prepared by a Commissioner in proof of a will, codicil, or letters testamentary ... ... ... ... ... 1 00
For attesting every statutory declaration or affirmation ... ... 1 00

## SCHEDULE C.

FORM OF BOND TO THE SHERIFF IN CASES OF ATTACHMENT.

Know all men by these presents that we, A. B., of , C. D., of , and E. F., of , are severally held and firmly bound unto the Sheriff of the district of Newfoundland, in the penal sum of (double the amount sworn to) each, to be paid to the said Sheriff, his successors and assigns; and for which payment well and truly to be made we severally bind ourselves, our executors and administrators, by these presents. Sealed with our seals, and dated at , this day of , A. D. ,

Whereas the said A. B. has been attached at the suit of G. H. for the sum of (the amount sworn to), and is desirous of giving security pursuant to the statute for release from such attachment:—

Now, the condition of this obligation is such, that if the said A. B., his executors or administrators, do and shall well and truly pay, or cause to be paid to the said G. H., his executors or administrators, or assigns, upon demand, the said sum of , or the amount of any judgment, if it be less than the said sum, that may be recovered by the said G. H. against the said A. B. in the said suit, and in default thereof restore to the said Sheriff the property mentioned and valued in the schedule annexed and attached in this suit, in the like order and condition in which the same now is, or pay to the said Sheriff the value of the property attached, then this obligation to be void, otherwise to be and remain in full force and virtue.

## SCHEDULE D.

FORM OF BOND TO THE SHERIFF IN CASES OF ARREST BEFORE JUDGMENT.

Know all men by these presents that we, A. B., of , C. D., of , and E. F., of , are severally held and firmly bound unto the Sheriff of the district of Newfoundland, in the penal sum of (double the amount of Judge's order) each, to be paid to the

Sheriff, his successors and assigns, and for which payment well and truly to be made we severally bind ourselves, our executors and administrators, by these presents. Sealed with our seals and dated at , this day of , A. D. .

Whereas the said A. B. has been arrested by Judge's order, at the suit of G. H. for the sum of , and is desirous of giving security, pursuant to the statute for the release of such arrest: Now the condition of this obligation is such, that if the said A. B be rendered to the custody of the said Sheriff, to abide the judgment of the Court in this cause, within, at latest, four days after judgment shall be signed against him in this said action, or the amounts of the said judgment and costs shall be paid to the plaintiff, or to the said Sheriff, on his behalf, then this obligation to be void, but otherwise shall remain in full force.

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## SCHEDULE E.

# THE RULES OF THE SUPREME COURT, 1889

### ORDER I.

Form and Commencement of Action.

1. All actions which have hitherto been commenced by writ in the Supreme Court, and all suits which have hitherto been commenced by bill, petition, or information in equity, or by citation, or otherwise, in probate matters, shall be instituted by a proceeding to be called an action.

2. Subject to rules of Court, proceedings in interpleader shall be such as those now used at law, and proceedings and applications in other matters shall be the same as they would have been if this Act had not passsed.

### ORDER II.

Writ of Summons and Procedure, &c.

1. Every action in the Court shall be commenced by a writ of summons, attachment or capias, as the case may be, which shall be indorsed with, or have attached thereto, a statement of the claim made, or of the relief or remedy required, in the action.

2. Any costs occasioned by the use of any more prolix or other forms of writs, and of claims thereon, than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court or Judge shall otherwise direct.

3. The writ for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in the forms in the appendix A hereto, with such variations as circumstances may require.

4. No writ for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of a Court or Judge.

5. A writ to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in the form in appendix A, with such variations as circumstances may require. Such notice shall be in form No. 5, in appendix A, with such variations as circumstances may require.

6. Every writ (unless it shall be otherwise provided) shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Chief Justice or of the presiding Judge.

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## ORDER III.

### Statement of Claim.

1. The statement of claim shall be made with every writ before it is issued.

2. The plaintiff may, by leave of the Court or Judge, amend the statement so as to extend it to any other cause of action or any additional remedy or relief.

3. The statement of claim shall be concise and to the effect of such of the forms in appendix C hereto as shall be applicable to the case, or if none be found applicable, then such other similarly concise form as the nature of the case may require.

4. If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, the statement shall show in what capacity the plaintiff or defendant sues or is sued.

5. In probate actions the statement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, next of kin, or in any and what other character.

6. In all actions where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (*a*) upon a contract, express or implied, (as for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt); or (*b*) on a bond or contract under seal; or (*c*) on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or (*d*) on a guaranty, whether under seal

or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (*e*) on a trust; or (*f*) in actions for the recovery of land with or without a claim for rent or mesne profits; the plaintiff shall in default of appearance and plea, or if the defendant be not allowed to defend, be entitled to enter final judgment.

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the claim, besides stating the nature of the demand, shall state the amount claimed for debt or in respect of such demand and interest, (if any), and for costs respectively, and, in case of writs returnable in St. John's, shall further state that upon payment thereof within four days after service, or where the defendant or person to be served resides beyond or outside the limits of the Central District, then within eight days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement shall be in the form in appendix C. The defendant may, notwithstanding such payment, have the costs taxed, and, if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

8. In all cases in which the plaintiff, in the first instance, desires to have an account taken, the statement shall contain a claim that such account be taken.

## ORDER IV.

### Indorsement of Address.

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon every writ and notice in lieu of service of a writ the address of the plaintiff, and also, his own name or firm and place of business, and also, if his place of business shall be more than two miles from the Court House at St. John's, another proper place, to be called his address for service, which shall not be more than two miles from the place at which the writ has been issued, or from that at which it is returnable, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

2. A plaintiff suing in person shall indorse upon every writ and notice in lieu of service of writ, his place of residence and occupation, and also, if his place of residence shall be more than two miles from the place at which the writ has been issued or at which it is returnable, another proper place, to be called his address for service, which shall not be more than such two miles distant as aforesaid, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him

3. In all cases where proceedings are commenced otherwise than by writ, the rules of this order shall apply to the document by which such proceedings shall be originated, as if it were a writ.

## ORDER V.

### Issue of Writ.

*I.—Place of Issue.*

1. In any action the plaintiff, wherever resident, may issue a writ at any place for which a Commissioner of the Supreme Court for the issue of writs is appointed.

*II.—Manner.*

2. Writs shall be written or printed, or partly written and partly printed, on forms to be supplied by the officers of the Court.

3. Writs issued in St. John's shall be sealed with the seal of the Supreme Court; in the case of writs issued in other places than St. John's a seal shall not be necessary.

4. The officer issuing such writ in St. John's shall make an entry thereof in a book, to be called the cause book, with the names of the parties, amount and cause of action, and date and number.

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## ORDER VI.

### Concurrent Writs.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked "concurrent," with date of issue; provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction, may be issued and marked as a concurrent writ with one for service within the jurisdiction.

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## ORDER VII.

### Disclosure by Solicitors and Plaintiffs.

1. Every solicitor whose names shall be indorsed on any writ shall on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or

privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And if the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm.

### Change of Solicitors.

3. A party suing or defending by a solicitor shall be at liberty to change his solicitor in any cause or matter without an order for that purpose, upon notice of such change being filed with the proper officer, but until such notice is filed and a copy thereof served the former solicitor shall be considered the solicitor of the party.

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## ORDER VIII.

### Renewal of Writ.

1. No original writ shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to a Commissioner for leave to renew the writ; and the Commissioner, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may renew the original or concurrent writ for six months from the date of such renewal, inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked "renewed," and the date of the day, month, and the year of such renewal; and a writ so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ.

If a Commissioner shall decline to renew a writ a Judge may, upon application, direct it to be renewed.

2. The production of a writ purporting to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so re-

newed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

3. Where a writ, of which the production is necessary, has been lost, the Court or a Judge, upon being satisfied of the loss and of the correctness of a copy thereof, may order that such copy shall be used in lieu of the original writ.

## ORDER IX.

### Service of Writ.

*Mode of Service.*

1. No service of writ shall be required when the defendant, by his solicitor, agrees in writing to accept service.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution of service of notice by advertisement or otherwise, as may seem just.

*On Particular Defendants.*

3. When husband and wife are both defendants to the action, service on the husband shall be deemed good service on the wife, but the Court or a Judge may order that the wife shall be served with or without service on the husband

4. When an infant is a defendant to an action, service on his or her father or guardian, or, if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the Court or Judge otherwise orders, be deemed good service on the infant; provided that the Court or Judge may order that service made or to be made on the infant shall be deemed good service.

5. When a lunatic or person of unsound mind, not so found by inquisition, is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he or she is, shall, unless the Court or Judge otherwise orders, be deemed good service on such defendant.

*On Partners, Firms and other Bodies.*

6. Where partners are sued in the name of their firm, or a person, company, or firm carrying on business or having a house of business in this Colony, is sued, the writ shall be served either upon the person sued or upon any one or more of the partners, or at the principal place within the jurisdiction of the business of the defendants, upon any person having

at the time of service the control or management of the business there; and, subject to the rules herein contained, such service shall be deemed good service.

7. Whenever, by any statute, provision is made for service of any writ, bill, petition, or other process, upon any corporation, official or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ may be served in the manner as provided. In the absence of statutory provision the writ shall be served upon either the head officer, secretary, clerk, or treasurer of any corporation, company, or society, or upon such person, or in such manner as the Court or Judge may direct

*In Actions to Recover Lands.*

8. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of a writ upon the door of the dwelling-house or other conspicuous part of the property.

*Generally*

9. The person serving a writ shall, before returning the writ, indorse on it the day of the month of the service thereof, and, in case of non-appearance, an affidavit of service of such writ shall be filed before a plaintiff can proceed to default.

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## ORDER X.

### Substituted Service.

Every application to the Court or a Judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

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## ORDER XI.

### Service out of the Jurisdiction.

1. Service out of the jurisdiction of a writ or notice of a writ, may be allowed by the Court or a Judge whenever (*a*) the whole subject matter of the action is land situate within the jurisdiction (with or without rents or profits), or stock or other property within the jurisdiction; or (*b*) any act, deed, will, contract, obligation or liability, affecting land or hereditaments, or stock or property, situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced, or otherwise affected in the action, or for the breach whereof damages or other relief are or is demanded; or (*c*) any relief is sought against any person domiciled or

ordinarily resident with the jurisdiction; or (*d*) in probate actions and where the action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled or resident within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of this Colony; or (*e*) the action is founded on any breach or alleged breach (1) of a contract made within the jurisdiction; or (2) of a breach within the jurisdiction of any contract wherever made, which according to the terms thereof ought to be performed within the jurisdiction; or (*f*) any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or (*g*) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

2. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the ground upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or Judge that the case is a proper one for service out of the jurisdiction under this order.

3 Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country, where or within which the writ is to be served or the notice given.

4. When the defendant is neither a British subject nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

5 Notice in lieu of service shall be given in the manner in which writs are served.

## ORDER XII.

### Appearance.

1. A defendant shall enter his appearance to a writ returnable in St. John's by delivering to the proper officer for filing and entry, a memorandum in writing similar to the form in appendix A, dated on the day of delivering the same, and containing the name of the defendant's solicitor or stating that defendant defends in person.

2. The solicitor of a defendant appearing in St. John's by a solicitor, shall state in such memorandum his place of business or his address for

service, which shall not be more than two miles from the Court House in St. John's.

3. A defendant appearing in person in St. John's shall state in such memorandum his address, and a place to be called his address for service, which shall not be more than two miles from the Court House, St. John's.

4. If the memoradum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a Judge, on the application of the plaintiff.

5. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names: but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

6. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

7. If two or more defendants in the same action shall appear by the same solicitor and at the same time the names of all defendants so appearing shall be inserted in one memorandum.

8. A solicitor not entering an appearance or putting in bail, or paying money into Court in lieu of bail, in pursuance of his written undertaking so to do, shall be liable to an attachment.

9. A defendant may appear at any time before judgment.

10. In Probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

11. Any person not named as a defendant in a writ for the recovery of land may by leave of the Court or a Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant.

12. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

13. Where a person not named as defendant in any writ for the recovery of land has obtained leave of the Court or a Judge to appear and defend, he shall enter an appearance, according to the foregoing rules of this order, intituled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

14. Any person appearing to a writ for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice therewith intituled in the action and signed by him or his solicitor; and an appearance, where the defence is not limited as above-mentioned, shall be deemed an appearance to defend for the whole.

15. A defendant before appearing shall be at liberty, without obtaining an order to enter or entering conditional appearance, to serve notice of motion to set aside the service upon him of the writ or notice of the writ or to discharge the order authorizing such service.

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## ORDER XIII.

### Default of Appearance.

1 Where a defendant fails to appear to a writ, and the plaintiff is desirous of proceeding, upon default of appearance he shall, before taking such proceedings, file an affidavit of service or of notice in lieu of service, or of service upon a defendant's solicitor who has undertaken to appear in writing, as the case may be.

2 In case of non-appearance by the defendant, the plaintiff may sign final or interlocutory judgment, as the case may be, in manner hereinafter provided by Order XXVI, in default of pleading.

3. In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land or of the part thereof to which the defence does not apply.

4. In all actions not by the rules of this order otherwise specially provided for, in case the party served with the writ and statement of claim, does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Order XV.

5. Where no appearance has been entered to a writ for a defendant who is an infant or a person of unsound mind, not so found by inquisition, the plaintiff may apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least three clear days before the day in such notice named for hearing the application, served upon or left at the

dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or Judge, at the time of hearing such application, shall dispense with such last-mentioned service.

6. No final judgment by default shall be entered upon a writ issued outside the Central District, or against any defendant resident outside the said district, upon process returnable in St. John's, except by leave of the Court or a Judge, and upon such proof of the indebtedness of the defendant as the Court or Judge may require; and it shall be competent for the Court or Judge to make any order for the further notification of the defendant as may appear just.

7. Where judgment is entered pursuant to any of the preceding rules of this order, it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may be just.

## ORDER XIV.

### Leave to Sign Judgment and Defend where Writ for Liquidated Demand, &c.

1. Where the defendant appears and pleads to a writ with a claim for a debt or a liquidated demand or for recovery of land, the plaintiff may, on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed, (if any), and stating that in his belief there is no defence to the action, apply to a judge for liberty to enter final judgment for the amount claimed, together with interest, if any, or for recovery of the land, (with or without rent or mesne profits), as the case may be, and costs. The Judge may thereupon, unless the defendant by affidavit or otherwise shall satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly.

2. The application by the plaintiff for leave to enter final judgment under the last preceding rule shall be made by order returnable not less than two clear days after service, accompanied by a copy of the affidavit and exhibits referred to therein.

3. The defendant may show cause against such application by affidavit, or (except in actions for the recovery of land) by offering to bring into Court the sum claimed with the writ. Such affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part, of the plaintiff's claim. And the Judge may, if he think fit, order the defendant or his agent, or, in the case of a company or corporation, any officer thereof, to attend and be examined upon oath, or to produce any leases, deeds, books, or documents, or copies of or extracts therefrom.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms (if any) as to suspending execution, or the payment of the amount levied or any part thereof into Court by the Sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

5. If it appear to the Judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, or time and mode of trial, or otherwise, as the Judge may think fit.

7. The Court or Judge may, with consent of all parties, dispose of the action finally in a summary manner, on such terms as to costs, or otherwise, as the Court or Judge may think fit.

## ORDER XV.

### Application for an Account.

1. Where the claim with a writ is for an account, or involves taking an account, if the defendant either fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the proper accounts, with all necessary inquiries and directions heretofore used in equity in similar cases, shall be forthwith made.

2. An application for such order as mentioned in the last preceding rule shall be made by motion, and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

## ORDER XVI.

### Parties.

*I.—Generally.*

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the

plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the Court or a Judge in disposing of the costs shall otherwise direct.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or Judge may, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just.

3. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

4 All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

6. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which (if any) of the defendants is liable, and to what extent, may be determined as between all parties.

8. Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Court or a Judge may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties.

9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the Court or a Judge to defend in such cause or matter on behalf or for the benefit of all persons so interested.

10. Subject to the provisions of the Act and these rules, in all probate actions, the rules as to parties, in use on the probate side previously to the commencement of this Act, shall continue to be in force.

11. No cause or matter shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of the plaintiff under any disability, without his own consent in writing thereto. Every party whose name is to be added as defendant shall be served with a writ or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice.

12. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Judge at any time before trial by motion, or at the trial of the action in a summary manner.

13. Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court or a Judge, file an amended copy of and sue out a writ, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

*II—Partners.*

14. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by motion to a Judge for a statement of the names of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct. Provided that, in the case of a co-partnership which has been dissolved, to the knowledge of the plaintiff, before the commence-

ment of the action, the writ shall be served upon every person sought to be made liable.

15. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

*III.—Persons under Disability.*

16. Infants where they are required to sue by their next friends, may sue as plaintiffs by their next friends, in the manner heretofore practised in equity, and may, in like manner, defend by their guardians appointed for that purpose. Married women may sue and be sued as provided by the Married Women's Property Acts.

17. Where lunatics and persons of unsound mind not so found by inquisition might respectively, before the passing of this Act, have sued as plaintiffs, or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend according to the practice in equity, and may in like manner defend any action by their committees or guardians appointed for that purpose.

18. An infant shall not (except where expressly allowed by law) enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance, shall make and file an affidavit in the form in appendix A, with such variations as circumstances may require.

19. Every infant served with a petition or notice of motion, or order in a matter, shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last rule mentioned.

20. Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the Clerk's office.

21. In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure, shall, if given with the consent of the Court or a Judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent.

*IV.—Proceedings by or against Paupers.*

22. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth $40,

his wearing apparel and the subject-matter of the cause or matter only excepted.

23. No person shall be permitted to sue as a pauper unless a petition (verified by affidavit) setting out a full and true statement of all the material facts to the best of the deponent's knowledge and belief, shall be produced before the Court or Judge to whom the application is made, and the Court or Judge may require the opinion, in writing, of counsel or solicitor upon such petition.

24. A person admitted to sue or defend as a pauper shall not be liable to any Court fee.

25. Where a person is admitted to sue or defend as a pauper the Court or a Judge may, if necessary, assign a counsel or solicitor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or Judge that he has some good reason for refusing.

26. Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him any fee, profit, or reward, for the conduct of his business in the Court, and any person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward, shall be guilty of a contempt of Court.

27. If any person admitted to sue or defend as a pauper gives, or agrees to give, any such fee, profit, or reward, he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper.

28. It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or order issued, or petition presented, without good cause.

29. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the Court or a Judge shall otherwise direct, be taxed as in other cases.

*V.—Administration and Execution of Trusts.*

30. In any case in which the right of the next of kin or a class shall depend upon the construction which the Court or a Judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such next of kin or class, and the Court or Judge shall consider that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such next of kin or class shall have been ascertained by means of inquiry or otherwise, the Court or Judge may appoint some one or more persons to represent such next of kin or class, and the judgment of the Court or Judge in the presence of such persons shall be binding upon the next of kin, or class so represented.

31. Any residuary legatee or next of kin entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin.

32. Any legatee interested in a legacy charged upon chattels real, and any person interested in the proceeds of such property directed to be sold, and who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate.

33. Any one of several *cestuis que trust* under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other *cestui que trust.*

34. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest.

35. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or *cestui que trust* for the administration of the estate or the execution of the trusts.

36 The Court or a Judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

37. Wherever, in any action for the administration of the estate of a deceased person or the execution of the trusts of any deed or instrument, or for the partition or sale of any property, a judgment or an order has been pronounced or made—

(*a.*) Under Order XV.;

(*b.*) Under Order XXX.;

(*c.*) Affecting the rights or interests of persons not parties to the action;

the Court or a Judge may direct that any persons interested in the estate or under the trust or in the property, shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings, in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may, within one month after such service, apply to the Court or Judge to discharge, vary, or add to the judgment or order.

38. It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the pro-

ceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the same manner, and subject to the same provisions, as a defendant entering an appearance.

39. A memorandum of the service upon any person of notice of the judgment or order in any action under rule 37 shall be entered in the Clerk's office upon due proof by affidavit of such service.

40. Notice of a judgment or order served pursuant to rule 37 shall be entitled in the action, and there shall be endorsed thereon a memorandum in the form in appendix F.

41. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ in an action.

42. If, in any cause, matter, or other proceeding it shall appear to the Court or a Judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding, on such notice to such persons (if any) as the Court or Judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding.

43. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Court or Judge, be entitled to appear either in Court or in chambers on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability. The Court or a Judge may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as they or he shall think fit.

*VI.—Third Party Procedure.*

44. Where a defendant claims to be entitled to contribution, or indemnity over against any person not a party to the action, he may, by leave of the Court or a Judge, issue a notice (hereinafter called the third-party notice) to that effect stamped with the seal of the Court, or countersigned by a clerk of the Court. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or

a Judge, be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of the form in appendix B, with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, and copy of the writ in the action.

45. If a person not a party to the action, who is served as mentioned in foregoing rule (hereinafter called the third party), desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance and defence in the action within four days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third-party notice. Provided always, that a person so served and failing to appear and defend within the said period may apply to the Court or a Judge for leave to appear and defend, and such leave may be given upon such terms, if any, as the Court or Judge shall think fit.

46. Where a third party makes default in entering an appearance and defence in the action, in case the defendant giving the notice suffer judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or a Judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice; provided that it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just.

47. Where a third party makes default in entering an appearance and defence in the action, in case the action is tried and results in favor of the plaintiff, the Judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party; provided that execution thereof be not issued without leave of the Judge until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the Court or a Judge may, on application by motion, order such judgment as the nature of the case may require to be entered for the defendant, giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him.

48. If a third party appears and defends, pursuant to the third-party notice, the defendant giving the notice may apply to the Court or a Judge for directions, and the Court or Judge, upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such man-

ner, at or after the trial of the action, as the Court or Judge may direct; and, if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party.

49 The Court or a Judge upon the hearing of the application mentioned in preceding rule, may, if it shall appear desirable to do so, give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the Court or Judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action.

50. The Court or a Judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such direction as to costs as the justice of the case may require.

51. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action.

## ORDER XVII.

### Change of Parties by Death, &c.

1. A cause or matter shall not become abated by reason of the marriage, death, bankruptcy, or insolvency, of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death.

2. In case of the marriage, death, bankruptcy, or insolvency, or devolution of estate by operation of law, of any party to a cause or matter, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the cause or matter as may be just.

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved.

4. Where by reason of marriage, death, bankruptcy, or insolvency, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

5. An order obtained as in the last preceding rule mentioned, shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

6. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter, shall be served with such order as in rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within four days from the service thereof.

7. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any order as in rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within four days from the appointment of a guardian *ad litem* for such party, and until such period shall have expired such order shall have no force or effect as against such last-mentioned person.

8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by motion to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died

execution may issue as in the case provided for by Order XXXVIII., Rule 17.

9. Where any cause or matter becomes abated, or in the case of any such change of interest as is by this order provided for, the solicitor for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the Cause Book opposite to the name of such cause or matter

10. Where any cause or matter shall have been standing for one year in the Cause Book marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the Cause Book.

## ORDER XVIII.

### Joinder of Causes of Action.

1. Subject to the following rules of this order, the plaintiff may unite in the same action several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such order as may be necessary or expedient for the separate disposal thereof.

2. No cause of action shall, unless by leave of a Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held or for any wrong or injury to the premises claimed: Provided that nothing in this order contained shall prevent any plaintiff in any action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these rules: Provided also, that in case any mortgage security shall be foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may, by motion or summons, apply to the Court or a Judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case shall require.

3. Claims by a trustee in bankruptcy or insolvency, as such, shall not, unless by leave of the Court or a Judge, be joined with any claim by him in any other capacity.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

7. The last three preceding rules shall be subject to rules one, eight and nine of this order.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of together.

9. If on the hearing of such application as in the last preceding rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of together, the Court or Judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just.

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## ORDER XIX.

### Pleading Generally.

1. The plaintiff shall, with the copy of the writ, serve upon the defendant a statement of his claim and of the relief or remedy to which he claims to be entitled, being a copy of that accompanying the original writ.

2. The defendant shall file with his appearance his defence, set-off or counter-claim, if any, and within the time limited for appearing and pleading (unless the time be extended), deliver to the plaintiff a copy thereof.

3. The plaintiff shall (unless the time be extended) within two days after receiving the defence, set off or counter-claim, file and deliver his reply (if any) thereto.

4. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or Judge, and then only upon such terms as the Court or Judge shall think fit, and within two days after delivery of the previous pleading, unless the time shall be shortened or extended by the Court or Judge. No new assignment shall be necessary or used, but everything which was formerly alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim or by way of reply.

5. As soon as any party has joined issue upon the preceding pleading of the opposite party simply, without adding any further or other pleading thereto, or if the plaintiff does not deliver a reply to the defence, or any party does not deliver any subsequent pleading within the period allowed for that purpose, the pleadings between any such parties shall be deemed to be closed, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.

6. The statement of claim and all subsequent pleadings shall be concise and as brief as the nature of the case will admit, and shall contain only a statement in summary form similar to or in effect such as the examples in appendix C and D, of the material facts on which the party pleading relies for his claim or defence, but not the evidence upon which they are to be proved, and shall when necessary be divided into paragraphs numbered consecutively. Dates, sums and numbers shall be expressed in figures. The pleadings shall be signed by the solicitor, or by the party if he sues or defends in person. In common actions set-off or counter-claims for debt, such as for goods sold, money paid, money received, wages, work and labour, use and occupation, etc, an account or bill of particulars shall be a sufficient statement of claim, set-off or counter-claim (subject to application for better particulars); provided such statement of claim, set-off or counter-claim be marked as such (as the case may be), and be entitled in the cause, and signed by the solicitor or by the party pleading if not acting by a solicitor.

7. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading; provided that if the particulars be of debt, expenses or damages, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading.

8. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms as to costs and otherwise as may be just.

9 The party at whose instance particulars have been delivered under a Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the order. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provided, operate as a stay of proceedings, or give any extension of time.

10. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered

for any party, or no address for service given in manner hereinbefore prescribed, then such pleading or document shall be delivered by being filed with the proper officer.

11. Every pleading shall be filed and shall be delivered between parties, and shall be marked on the face with the date, the title of the action, and the description of the pleading and shall be endorsed with the name and address for service of the solicitor, or of the party pleading if not acting by a solicitor.

12. Every allegation of fact in any pleading in an action, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind, not so found by inquisition.

13. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and subject thereto an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

14 The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, (as the case may be), as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings as for instance, fraud, statute of limitations, release, payment, performance, facts shewing illegality, either by statute or common law, or statute of frauds.

15. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the parties pleading the same.

16. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

17 Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any) subsequent to reply may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

18. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

19. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the statute of frauds or otherwise.

20. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

21. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

22. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material.

23. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

24. Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied: (*e. g*, consideration for a bill of exchange, where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.)

25. No technical objection shall be raised to any pleading on the ground of any alleged want of form.

26. The Court or a Judge may at any stage of the proceedings order to be struck out or amended any matter in any statement, indorsement, or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass or delay the fair trial of the action; and may in any such case if they or he shall think fit, order the costs of the application to be paid as between solicitor and client.

## ORDER XX.

### Statement of Claim.

1. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given as the Court or a Judge may think just, to the same extent as if it had been asked for.

2. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly.

3 In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.

4. In probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

## ORDER XXI.

### Defence and Counter-claim.

1. In actions for debt or unliquidated demand in money, comprised in Order III, Rule 6, a mere denial of the debt shall be inadmissible.

2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact: *e g*, the drawing, making, endorsing, accepting, presenting, or notice of dishonour of the bill or note.

3 In actions comprised in Order III, Rule 6, classes (A) and (B), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed: *e g*, in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed: in an action for money had and received, it must deny the receipt of the money, or the

existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.

4. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted.

5. If either party wishes to deny the right of any other party to claim as executor, or as trustee whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

6. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court or Judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

7. A defendant in an action may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. Rules 1, 2, and 3 of Order XX., with regard to statements of claim, shall apply to counter-claims, and a reply to a counter-claim shall be subject to the rules applicable to statements of defence.

8. Where any defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall, in his statement of defence, state specifically that he does so by way of counter-claim.

9. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross-action, would be defendants to such cross-action, and shall file and deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

10. Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ, and every defence so served shall be indorsed in the form No. 2 in appendix B, or to the like effect.

11. Any person not a defendant to the action, who is served with a defence and counter-claim, as aforesaid, must appear and plead thereto as if he had been served with a writ to appear in an action, in default of which the defence and counter-claim shall be taken to be admitted.

12. Where a defendant sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before trial apply to the Court or a Judge for an order that such counter-claim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just.

13. If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with.

14. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court or a Judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

15. In probate actions the party opposing a will may with his defence give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, subject in respect of costs to the probate practice before this Act came into operation.

16. Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute, and every defence of not guilty by statute shall have the same effect as the plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence to the same cause of action without the leave of the Court or Judge.

17. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of a statute, he shall insert in the margin of his pleading the words "by statute," together with the year of the reign in which the Act on which he relies was passed, and also the chapter and section of such Act, and shall specify whether such Act is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any statute.

18. No plea or defence shall be pleaded in abatement.

19. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right or he claims relief upon any

equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinafter mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely upon any ground of defence which he can prove except as hereinbefore mentioned.

## ORDER XXII.

### Payment into and out of Court and Tender.

1. Where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or at any later time by leave of the Court or a Judge, pay into Court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability, (except in actions or counter-claims for libel or slander), pay money into Court which shall be subject to the provisions of rule 6: Provided that in an action on a bond under the Statute 8 and 9 Will. III, c 11, payment into Court shall be admissible to particular breaches only, and not to the whole action.

2. Payment into Court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein.

3. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court.

4. If the defendant pays money into Court without defending, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money, and also the claim or cause of action in respect of which such payment has been made. Such notice shall be in the form in appendix B, with such variations as circumstances may require.

5. In the following cases of payment into Court under this order, viz:—

(*a.*) When payment into Court is made without defending;

(*b.*) When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court is made, is not denied in the defence;

(*c.*) When payment into Court is made with a defence setting up a tender of the sum paid;

the money paid into Court shall be paid out to the plaintiff on his request, or to his solicitor, unless the Court or a Judge shall otherwise order.

6. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the defence, the following rules shall apply:—

(*a.*) The plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings, in respect of such claim or cause of action, except as to costs, shall be stayed; or the plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in Court subject to the provisions hereinafter mentioned;

(*b.*) If the plaintiff accepts the money so paid in, he shall, after service of such notice in the form in appendix B, as is in rule 7 mentioned, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor, unless the Court or a Judge shall otherwise order

(*c.*) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in Court and be subject to the order of the Court or a Judge, and shall not be paid out of Court except in pursuance of an order. If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into Court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid to him.

7. The plaintiff, when payment into Court is made without defending, may, within four days after the receipt of notice of such payment, or when such payment is first signified in a defence, may, before reply, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the form in appendix B, and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of two days from the service of such notice, unless the Court or a Judge shall otherwise order, and in case of non-payment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed.

8. Where money is paid into Court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this order in the same manner as in the action tried.

9. A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant.

10. Money paid into Court under an order of the Court or a Judge shall not be paid out of Court except in pursuance of an order of the Court or Judge: Provided that, where before the delivery of defence money has been paid into Court by the defendant pursuant to an order under the provisions of Order XIV., or under an order upon a garnishee in an action commenced by writ of attachment, he may, (unless the Court or a Judge shall otherwise order) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim; and the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding rules of this order relating to money paid into Court, and shall be subject in all respects thereto.

11. In any cause or matter in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition, the Court or a Judge may, at or after the trial, order that the whole or any part of such sum shall be paid into Court to the credit of an account intituled in the cause or matter; and any sum so paid into Court, and any dividends or interest thereon, shall be subject to such orders as may from time to time be made by the Court or a Judge concerning the same, and may either be invested, or be paid out of Court, or transferred to such persons, to be held and applied upon and for such trusts and in such manner, as the Court or Judge shall direct.

12. Money paid into Court or securities purchased under the provisions of the last preceding rule, and the dividends or interest thereon, shall be sold, transferred, or paid out to the party entitled thereto, pursuant to the order of the Court or Judge.

## ORDER XXIII.

### Matters arising pending the Action.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply, has expired, the plaintiff may, within four days after such ground of defence has arisen, or at any subsequent time by leave of the Court or a Judge, deliver a further defence or further reply, as the case may be, setting forth the same.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence (which confession may be in the form in appendix B, with such variations as circumstances may require), and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order.

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## ORDER XXIV.

### Proceedings in lieu of Demurrer.

1. No demurrer shall be allowed.

2. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

3. If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

4. The Court or a Judge may at any time before judgment order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

5 No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not.

## ORDER XXV.

### Discontinuance.

1 The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action against all or any of the defendants, or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

2. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties, or by consent in open Court.

3. Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, in case such respective costs are not paid within two days after taxation.

4. If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the Court or a Judge may, if they or he think fit, order a stay of such subsequent action until such costs shall have been paid.

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## ORDER XXVI.

### Default of Pleading.

1. If a writ shall be issued or copy thereof served without a statement of claim therewith the defendant may apply to the Court or a Judge to dismiss the action with costs, and on the hearing of such application the Court or Judge may order the action to be dismissed accordingly, or may make such other order on such terms as the Court or Judge shall think just.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, with his appearance or within the time allowed for defending, file and deliver a defence, the plaintiff may enter final judgment for the amount claimed, with interest to the date of judgment and costs. For this purpose if a defence be on file it shall be necessary that an affidavit be filed on behalf of the plaintiff that no defence has been served.

3. When in any such action as in the last preceding rule mentioned there are several defendants, if one or more of them make default as mentioned in the last preceding rule, the plaintiff may enter final judgment against the defendant or defendants so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant, or all the defendants, if more than one, make default as mentioned in rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants, (filing an affidavit, where such is required by rule 2), and the value of the goods, and the damages, or the damages only, as the case may be, shall be ascertained in any way which the Court or Judge may direct, and without the necessity of notice of assessment unless the Court or Judge shall otherwise order

5 When in any such action as in rule 4 mentioned there are several defendants, if one or more of them make default as mentioned in rule 2, the plaintiff may, in manner aforesaid, enter an interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others And in such case the value and amount of damages against the defendant making default shall be assessed, (without the necessity of notice, unless otherwise ordered), at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and any defendant make default as mentioned in rule 2, the plaintiff may, in manner aforesaid, enter final judgment for the debt or liquidated demand, interest and costs, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in rules 4 and 5.

7. In an action for the recovery of land, if the defendant makes default as mentioned in rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ shall recover possession of the land.

8. Where the plaintiff has preferred with the writ a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed

or any part of them, or damages for breach of contract, or wrong, or injury to the premises claimed by a writ for the recovery of land, if the defendant makes default as mentioned in rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants and proceed as mentioned in rules 4 and 5.

9. If the plaintiff's claim be for a debt or liquidated demand, the detention of goods and pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may, by leave of the Court or a Judge, enter judgment, final or interlocutory, as the case may be, for the part unanswered; provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand; provided also that, where there is a counter-claim, execution on any such judgment as above mentioned in respect of the plaintiff's claim shall not issue without leave of the Court or a Judge.

10. In probate actions, if any defendant make default in filing and delivering a defence, the action may proceed, notwithstanding such default.

11. In all other actions than those in the preceding rules of this order mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment and such judgment shall be given as upon the statement of claim the Court or a Judge shall consider the plaintiff to be entitled to.

12. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court or Judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

14. Any judgment by default whether under this order or under any other of these rules, may be set aside by the Court or Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit.

## ORDER XXVII.

### AMENDMENT.

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his statements or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

2. The plaintiff may, without any leave, amend his statement of claim, once at any time before the expiration of the time limited for reply and before replying, or before entering a default.

3. A defendant who has set up any counter-claim or set-off may, without any leave, amend such counter-claim or set-off at any time before the expiration of the time allowed him for answering the reply and before such answer.

4. Where any party has amended his pleading under either of the last two preceding rules, the opposite party may, within four days after the delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment, or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just.

5. Where any party has amended his pleading under rule 2 or 3, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead or within two days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above-mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

6. In all cases not provided for by the preceding rules of this order, application for leave to amend may be made by either party to the Court or Judge before or at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.

7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or otherwise, such order to amend shall, on the expiration of such limited time as aforesaid, become *ipso facto* void, unless the time is extended by the Court or a Judge.

8. Whenever any statement or pleading is amended, the same, when amended, shall be marked with the date of the order (if any) under which the same is so amended, and of the day on which such amendment is made.

9. Whenever any statement or pleading is amended, such amended document shall be filed and shall be delivered to the opposite party within the time allowed for amending the same.

10. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge

11. The Court or a Judge may at any time, and on such terms as to costs or otherwise as the Court or Judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

12. The costs of, and occasioned by, any amendment made pursuant to rules 2 and 3 of this order, shall be borne by the party making the same, unless the Court or Judge shall otherwise order.

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## ORDER XXVIII.

### Discovery and Inspection.

1. Any party to an action or cause may deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also, that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2 In adjusting the costs of the cause or matter inquiry shall, at the instance of any party, be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court or Judge, either with or without an application for inquiry, that such interrogatories, or any of them, have been exhibited unreasonably, vexatiously, or at improper length, the costs so occasioned by such interrogatories and the answers thereto shall be paid in any event by the party in fault.

3. Interrogatories shall be in the form in appendix B, with such variations as circumstances may require.

4. If any party to a cause or matter be a body corporate, or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, or be a member of a company such as an insurance club, any opposite party may apply for an order allowing

him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

5 Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bona fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

6. Interrogatories shall be answered by affidavit to be filed within two days, or within such other time as a Judge may allow.

7. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made disallowing the interrogatories in whole or in part, and with costs or otherwise, or requiring the party interrogated to answer or answer further, either by affidavit or by *viva voce* examination, as the Judge may direct.

8. Any party may, without filing any affidavit, apply to any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question therein. In default of his so doing to the satisfaction of the applicant, application may be made to the Court or Judge for an order. On the hearing of such application the Court or Judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may, in their or his discretion, be thought fit.

9. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be in the form in appendix B, with such variations as circumstances may require.

10. It shall be lawful for the Court or a Judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

11. Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such

document in evidence on his behalf in such cause or matter, unless he shall satisfy the Court or a Judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge shall deem sufficient for not complying with such notice; in which case the Court or Judge may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge shall think fit.

12. The party to whom such notice is given shall, within two days from the receipt of such notice, deliver to the party giving the same a notice stating a time within two days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground.

13. If the party served with notice under the preceding rule omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the Judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he may think fit; and, except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

14. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

15. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence (if any) struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly.

16. Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the

party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

17. A solicitor, upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

18 Any party may, at the trial of a cause, matter, or issue, use in evidence any one or more of the answers, or any part of an answer, of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always, that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

19. In every cause or matter the costs of discovery, by interrogatories or otherwise, shall be allowed by the Court or a Judge as part of the costs of the party seeking them where, and only where, such discovery shall appear to the Judge at the trial, or, if there is no trial, to the Court or Judge, or shall appear to the taxing officer to have been reasonably asked for. The Court or Judge may in the first instance order the party seeking discovery to pay any costs and expenses to the opposite party attending the order or discovery, subject to their allowance or disallowance afterwards to the party seeking discovery.

## ORDER XXIX.

### Admissions.

1. Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless the Court or a Judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

3. Any party may, by notice in writing, at any time not later than two days before the day of trial, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the

same within two days after service of such notice, or within such further time as may be allowed by the Court or a Judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the Court or a Judge certify that the refusal to admit was reasonable, or unless the Court or a Judge shall at any time otherwise order or direct Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice; provided also, that the Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

4. Any party may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a Judge may, upon such application, make such order, or give such judgment, as the Court or Judge may think just.

5. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof be required.

6. Notice to produce documents shall be in the form in appendix B, with such variations as circumstances may require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served

7. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

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## ORDER XXX.

### Issues, Inquiries and Accounts

1. When in any cause or matter it appears to the Court or a Judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court or a Judge.

2 The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special

or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

3. The Court or a Judge may, either by the judgment or order directing an account to be taken, or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account, the books of account in which the accounts in question have been kept, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

4. When any account is directed to be taken, the accounting party, unless the Court or Judge shall otherwise direct, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be filed or left in the Judge's chambers, or with the master or referee, as the case may be.

5. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner.

6. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of unless the Court or a Judge shall otherwise direct.

7. Where by any judgment or order, whether made in Court or in Chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number, and such judgment or order shall be in the form in appendix K, with such variations as the circumstances of the case may require.

8. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

9. If it shall be made to appear to the Court or a Judge that there is any undue delay in the prosecution of any accounts or inquiries or in any other proceedings under any judgment or order, the Court or Judge may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings, or the conduct thereof, or the stay thereof, and the summoning of persons whose attendance is required, and as to the costs of the proceedings, as the circumstances of the case may require.

## ORDER XXXI.

### I.—Special Case.

1. The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

2. If it appear to the Court or a Judge that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given on any question or issue of fact is tried, or before any reference is made to a master, referee, or an arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

3. Every special case shall be filed by the plaintiff, and signed by the several parties or their counsel or solicitors. Copies for the use of the Judges shall be delivered by the plaintiff.

4. No special case in any cause or matter to which a married woman (not being a party thereto in respect of her separate property or of any separate right of action by or against her), infant, or person of unsound mind, not so found by inquisition, is a party, shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

5. Either party may, by motion, have a special case set down for argument.

6. The parties to a special case may, if they think fit, enter into an agreement in writing, that, on the judgment of the Court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

7. This order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto.

8. Any special case may hereafter be stated, for the same purposes and in the same manner as heretofore, and the same shall be deemed to be a special case stated in a matter within the meaning of this order.

II.—Issues of Fact without Pleadings.

9. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the Court or a Judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an issue in the form No. 15 in appendix B, with such variations as circumstances may require, and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdiction of the Court or Judge, in the same way as the proceedings in an action.

10. The Court or a Judge may by consent of the parties order that, upon the finding in the affirmative or negative of such issue as in the last preceding rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them either with or without the costs of the cause or matter.

11. Upon the finding on any such issue, as in rule 9 mentioned, judgment may be entered for the sum so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial.

12. The proceedings upon such issue, as in rule 9 mentioned, may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.

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## ORDER XXXII.

## TRIAL.

I.—Place.

1. Every action shall, unless the Court or a Judge otherwise orders, be tried in the place where the writ is returnable. The Court or Judge may transfer a cause to some other place for trial at any time after the return of the writ.

2. The Court or a Judge may, in any cause or matter, at any time or from time to time, order that different questions of fact arising therein be

tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one or more issues of fact be tried before any other or others.

### II.—Notice and Entry of Trial.

3. Notice of trial may be given in any cause or a matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial.

4. If the plaintiff does not proceed to trial in the term in which the pleadings are closed, or, if they are closed out of term, in the next succeeding regular term, or within such extended time as the Court or a Judge may allow, the defendant may give notice of trial, or may apply to the Court or Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just.

5. At least two days' notice of trial shall be given in the term in which pleadings are closed, and eight days' notice in any subsequent term, unless the party to whom it is given has otherwise consented, or is under other terms or has been otherwise ordered.

6. Notice of trial shall be given before entering the case on the cause-list for trial, and notice may be given notwithstanding that the pleadings are not closed

7. No notice of trial shall be countermanded except by consent, or by leave of the Court or a Judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

8. If the party giving notice of trial omits to enter the case on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last preceding rule, enter the case for trial.

### III.—Papers for Judge.

9. The party entering the trial shall file a copy of the whole of the pleadings for the use of the Judge at the trial.

### IV.—Proceedings at Trial.

10. If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him.

11. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be

entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim so far as the burden of proof lies upon him.

12. Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a Judge upon such terms as may seem fit.

13 The Judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit.

14. Where the party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of *habeas corpus*, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of *habeas corpus*, or an order for bringing in the body, may be issued for such future day.

15. Upon a trial with a jury, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his cause, and also to sum up the evidence, if any, and the right to reply shall be the same as heretofore.

16. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless two days, at least, before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

17. The Judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter.

18. The Judge may, at or after a trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of the Court or Judge

### V.—Inquiry as to Damages.

19.—In every action or proceeding in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered is

substantially a matter of calculation, the Court or Judge may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the Court, or some other person, and the attendance of witnesses and the production of documents, before such officer, or other person, may be compelled by *subpœna*, and such officer or person may adjourn the inquiry from time to time, and shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with such indorsement to the person entitled to the damages, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise, as upon an assessment of damages.

20. Where damages are to be assessed, in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

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## ORDER XXXIII.

### I.—Evidence Generally.

1 In the absence of any agreement in writing between the parties or their solicitors, and subject to these rules, the witnesses at the trial of any action or at any assessment of damages shall be examined *viva voce* and in open Court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner; provided that, where it appears to the Court or Judge that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

2. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the Court or a Judge, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence.

3 Office copies of all writs, records, pleadings and documents filed in the Supreme Court shall be admissible in evidence in all causes and matters and between all persons or parties, to the same extent as the original would be admissible

### II.—Examination of Witnesses.

4 The Court or a Judge may in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the

examination upon oath before the Court or Judge, or any officer of the Court, or any other person and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms (if any) as the Court or a Judge may direct.

5. An order for a commission to examine witnesses shall be in the form in appendix J, with such variations as circumstances may require.

6. The Court or a Judge may, in any cause or matter, at any stage of the proceedings, order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court or Judge may think fit to be produced: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

7. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document, shall be deemed guilty of contempt of Court, and may be dealt with accordingly.

8. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the like conduct money and payment, for expenses and loss of time, as upon attendance at a trial in Court.

9. Where any witness or person is ordered to be examined before any officer of the Court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

10. The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination.

11. The deposition taken before an officer of the Court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the

counsel, solicitors, or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question.

12. If any person duly summoned by *subpœna* to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed at the Clerk's office, and thereupon the party requiring the attendance of the witness may apply to the Court or a Judge *ex parte* or on notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be.

13. If any witness shall object to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Clerk's office to be there filed, and the validity of the objection shall be decided by the Court or a Judge.

14. In any case under the last two preceding rules, the Court or a Judge shall have power to order the witness to pay any costs occasioned by his refusal or objection.

15. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Clerk's office, and there filed.

16. The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon, and the Court or a Judge may direct such proceedings and make such order as upon the report they or he may think just.

17. Except where by this order otherwise provided, or directed by the Court or a Judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Court or Judge is satisfied that the deponent is dead, or beyond the judicial district in which the Court is held, or at such a distance as, in the opinion of the Court or Judge, shall justify the admission of the deposition instead of the attendance of the witness, or is unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence saving all just exceptions without proof of the signature to such certificate.

18. Any officer of the Court, or other person directed to take the examination of any witness or person, may administer oaths.

19. Any party in any cause or matter may by *subpœna ad testificandum* or *duces tecum* require the attendance of any witness before an officer

of the Court, or other person appointed to take the examination for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such *subpœna* to attend before such officer or person for cross-examination.

20. Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial.

21. The practice with reference to the examination, cross-examination and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage.

22. The practice of the Court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the Court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case.

23. No affidavit or deposition filed or made before issue joined in any cause or matter shall, without special leave of the Court or a Judge, be received at the hearing or trial thereof, except such as were filed or made under an order or agreement for their use at the hearing or trial.

24. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

### III.—Subpœna.

25. A writ of *subpœna* shall be in one of the forms in appendix H, with such variations as circumstances may require.

26. Where a *subpœna* is required for the attendance of a witness for the purpose of proceedings in chambers, such *subpœna* shall issue from the Clerk's office upon a note from the Judge.

27. Every *subpœna* other than a *subpœna duces tecum* shall contain three names where necessary or required, but may contain any larger number of names.

28. No more than three persons shall be included in one *subpœna duces tecum*, and the party suing out the same shall be at liberty to sue out a *subpœna* for each person if it shall be deemed necessary or desirable.

29. In the interval between the suing out and service of any *subpœna* the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ marked "altered," with the initials of the proper officer.

30. The service of a *subpœna* shall be effected by delivering a copy of the writ, and of the endorsement thereon, and at the same time producing the original writ, if required by the person served.

31. Affidavits filed for the purpose of proving the service of a *subpœna* upon any defendant must state when, where and how, and by whom, such service was effected.

32. The service of any *subpœna* shall be of no validity if not made within twelve weeks after the *teste* of the writ.

### IV.—Perpetuating Testimony.

33. Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim.

34. In all actions to perpetuate testimony touching any honour, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney General may be made a defendant, and in all proceedings in which the depositions taken in any such action, in which the Attorney General was so made a defendant, may be offered in evidence, such depositions shall be admissible notwithstanding any objection to such depositions upon the ground that theCrown was not a party to the action in which such depositions were taken.

35. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose.

36. No action to perpetuate the testimony of witnesses shall be set down for trial.

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## ORDER XXXIV.

### I.—Affidavits and Depositions.

1. Upon any motion, petition, or order evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

2. Every affidavit shall be intituled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

4. Affidavits sworn in Newfoundland and its dependencies shall be sworn before a Judge, the Chief Clerk and Registrar, Clerk, Commissioner to administer oaths, or other officer empowered under these rules or otherwise to administer oaths.

5. Every Commissioner to administer oaths, or other officer, shall express the time when and the place where he shall take any affidavit, or the acknowledgement of any deed, or recognizance; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without leave of the Court or a Judge; and every such Commissioner or other officer shall express the time when, and the place where, he shall do any other act incident to his office.

6. All examinations, affidavits, acknowledgments, declarations, affirmations, and attestations in causes or matters depending in the Supreme Court, may be sworn and taken in Great Britain and Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Judge, Court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions; and the Judges and other officers of the Supreme Court shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, consul, or vice-consul, attached, appended, or subscribed to any such examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or to any other deed or document.

7. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

8. Every affidavit shall state the description and true place of abode of the deponent.

9. In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above named" deponents.

10. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

11. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall, without leave of the Court or a Judge, be read or made use of in any matter depending in Court unless the interlineation, or alteration, or erasure, is authenticated by the initials of the officer taking the affidavit.

12. When an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent; that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

13. The Court or a Judge may receive any affidavit sworn for the purpose of being used in any cause or matter notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

14 An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed and the copy authenticated by the officer.

15. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself.

16. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk, or partner.

17. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used unless by leave of the Court or a Judge.

18. Except by leave of the Court or a Judge no order made *ex parte* in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

### II.—Affidavits and Evidence in Chambers.

19 All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before the Judge in chambers,

20. Every alteration or erasure in an account verified by affidavit to be left at chambers shall be marked with the initials of the Commissioner or officer before whom the affidavit is sworn.

III.—TRIAL ON AFFIDAVIT.

21. Within four days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the Court or a Judge may order or allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor copies thereof.

22. The defendant, within four days after delivery of the copies, or within such time as the parties may agree upon, or the Court or a Judge may allow or order, shall file his affidavits and deliver to the plaintiff or his solicitor copies thereof.

23. Within two days after the expiration of the last-mentioned four days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor copies thereof.

24. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of four days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a Judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

25. The party to whom such notice as is mentioned in the last preceding rule is given, shall be entitled to compel the attendance of the deponent for cross-examination in the same way that he might compel the attendance of a witness to be examined.

26. When the evidence under this order is taken by affidavit, the notice of trial shall be given at the same time after the close of the evidence as in other cases is by these rules provided after the close of the pleadings; provided that other affidavits may be allowed if all the parties interested consent thereto, or the Court or a Judge so order.

## ORDER XXXV.

MOTION FOR NEW TRIAL.

1. If on a motion made to two Judges for a new trial, or to set aside a verdict, finding, or judgment, they differ in opinion, the motion may be

renewed before the three Judges at their next sitting, or at such time as the Court or two of the Judges may order or allow; provided that, with consent of parties, the Judge by or before whom the trial was had may alone hear and determine such motion.

2. Every application for a new trial shall be by notice of motion, and no *rule nisi*, order to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of.

3. The notice of motion shall be a two days' notice, and shall be served within two days after the trial, unless the Court or Judge shall extend the time.

4. The notice may be amended at any time by leave of the Court or a Judge on such terms as the Court or Judge may think just.

5. A new trial shall not be granted on the ground of mis-direction or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Court some substantial wrong or miscarriage has been thereby occasioned in trial; and if it appear to the Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only, or as to the other party or parties.

6. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

7. Application for a new trial shall not operate as a stay of execution or proceeding except so far as the Judge who tried the case or the Court constituted of two or more Judges may order, and no intermediate act or proceeding shall be invalidated except so far as the Judge or Court as aforesaid may direct.

## ORDER XXXVI.

### Motion for Judgment.

1. Where at the trial the Judge abstains from directing any judgment to be entered, any party may move for judgment.

2. Where at or after a trial with a jury the Judge has directed that any judgment be entered, any party may in the manner directed for motions for new trials apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered

is wrong by reason that the finding of the jury upon the questions submitted to them has not been properly entered.

3. Where at or after a trial by a Judge, either with or without a jury, or upon the report of a referee, the Judge has directed that any judgment be entered, any party may apply, in the manner directed for motions for new trials, to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong.

4. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, any party may set down a motion for judgment as soon as such issues or questions have been determined.

5. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down a motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms (if any) as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact.

6. No motion for judgment shall, except by leave of the Court or a Judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

7. Upon a motion for judgment, or upon an application for a new trial, the Court may draw all inferences of fact, not inconsistent with the finding, and if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit.

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## ORDER XXXVII.

### Entry of Judgment.

1. A memorandum of every judgment shall be entered by the proper officer in the book to be kept for the purpose, and the judgment shall be entered up and filed with the whole of the pleadings and other essential proceedings in the cause, and shall be signed by the proper officer. The forms of judgment in appendix F shall be used, with such variations as circumstances may require.

2. Where any judgment is pronounced by the Court or a Judge, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the Court or Judge shall otherwise order, and the judgment shall take effect from that date; provided, that by special leave of the Court or Judge a judgment may be ante-dated or post-dated.

3. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

4. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order, which shall be served upon the person required to obey the same, there shall be endorsed a memorandum in the words or to the effect following, viz.:—

"If you, the within-named A. B., neglect to obey this judgment [or order] by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment [or order]."

5. Where under the Act or these rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly.

6. Where by the Act or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

7. Where reference is made to a master or other person to ascertain the amount for which final judgment is to be entered, the certificate of the master or other person shall be filed in the office when judgment is entered.

8. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor.

9. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a Judge and gives his consent in person, or unless his written consent is attested by a clerk or commissioner of the Court or by a solicitor acting on his behalf, except in cases where the defendant is a barrister or solicitor.

## ORDER XXXVIII.

### Execution.

1. Where any person is by any judgment or order enforceable by process for contempt, directed to pay any money, or to deliver up or transfer any property, real or personal, to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand.

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may, on breach or non-performance of the condition, take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a Judge shall otherwise direct.

3. A judgment for the recovery by or payment to any person of money or for the recovery or delivery of the possession of land or of any property other than land or money may be enforced by any of the modes by which a judgment or decree might have been enforced at the time of the passing of this Act.

4. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

5. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

6. Where a judgment or order is against a firm, execution may issue—

(*a*) Against any property of the partnership;

(*b*) Against any person who has appeared in his own name under Order XII., or who has admitted on the pleadings that he is or who has been adjudged to be, a partner;

(*c*) Against any person who has been served, as a partner, with the writ, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

7. Every writ of execution shall be endorsed with the name and place of abode or office of business of the party or solicitor actually suing out the same.

8. Every writ of execution shall bear date of the day on which it is issued. The forms in appendix G shall be used, with such variations as circumstances may require.

9. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

10. Every writ of execution for the recovery of money shall be indorsed with a direction to the Sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of $5 per cent. per annum from the time when the judgment or order was entered or made, provided that in cases where there is an agreement between the parties that more than $5 per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed.

11. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of *fieri facias* to enforce payment thereof, subject nevertheless as follows:

(*a.*) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period:

(*b.*) The Court or a Judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit.

12. Upon any judgment or order for the recovery or payment of a sum of money and costs, if the costs have not been finally taxed, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs.

13. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the Court or a Judge shall order execution to issue at an earlier or later date with or without terms.

14. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, by being marked for that purpose by the proper officer with his name and the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the Sheriff, so marked by such officer; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

15. The production of a writ of execution, or of the notice renewing the same, purporting to be marked as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

16. As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment or the date of the order.

17. In the following cases, viz.:

(*a*) Where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;

(*b*.) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife;

(*c*.) Where a party is entitled to execution upon a judgment of assets *in futuro*;

(*d*.) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise as shall be just.

18. Every order of the Court or a Judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

19. Any person not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter.

20. No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just.

21. Nothing in this order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

22. Nothing in this order shall affect the order in which writs of execution may be issued.

23. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction or judgment for the specific performance of any contract be not complied with, the Court or a Judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or Judge, at the cost of the disobedient party, and thereupon the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained and costs. In case of the neglect or refusal of a person, or his inability, or the difficulty of enforcing him, from absence or other cause, to comply with a judgment or order directing him to execute any conveyance, contract, or other document, or to indorse any negotiable instrument, the Court or Judge may order that such conveyance, contract, or other document, shall be executed, or such negotiable instrument indorsed, by such person as the Court or Judge may nominate; and the conveyance, contract, document, or instrument so executed or indorsed, shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

24. Any judgment or order against a corporation wilfully disobeyed, may, by leave of the Court or a Judge, be enforced by execution against

the corporate property, or by attachment against the directors or other officers thereof, or by writ of execution against their property.

II.—Discovery in Aid of Execution.

25. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the debtor liable under such judgment or order, or his agent, or in the case of a corporation or company, that any officer thereof be orally examined, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before a Judge or an officer of the Court as the Judge or Court shall appoint; and the Court or Judge may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents.

26. In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the Court or a Judge, and the Court or Judge may make such order thereon for the attendance and examination of any party or otherwise as may be just.

27. The costs of any application under the last two preceding rules, or either of them, and of any proceedings arising from or incidental thereto, shall be in the discretion of the Court or a Judge, or in the discretion of such officer as in rule 25 mentioned, if the Court or a Judge shall so direct, and may be recovered with and in the same manner as the judgment or otherwise.

III.—Execution.

28. Where it appears, upon the return of any writ of *fieri facias*, that the sheriff or other officer has by virtue of such writ seized, but not sold, any goods of the person directed to pay a sum of money or costs, the person to whom such sum of money or costs is payable shall, immediately after such writ with such return shall have been filed as of record, be at liberty to sue out a writ of *venditioni exponas*.

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## ORDER XXXIX.

Writ of Possession.

1. A judgment or order that a party do recover possession of any land may be enforced by writ of possession, in manner before the commencement of the principal act used in actions of ejectment.

2. Upon any judgment or order for the recovery of any land and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the successful party.

## ORDER XL.

### Writ of Delivery.

1. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the Court or a Judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property, upon paying the value assessed (if any), and that if the property cannot be found, and unless the Court or Judge shall otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the sheriff's bailiwick, till the defendant deliver the property; or, at the option of the plaintiff, that the sheriff cause to be made of the defendant's goods the assessed value (if any) of the property.

2. A writ of delivery shall be in the form in appendix G, and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest.

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## ORDER XLI.

### I.—Interlocutory Orders as to Mandamus, Injunctions, or Interim Preservation of Property, &c.

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

2. It shall be lawful for the Court or a Judge, on the application of any party, to make any order for the sale, by any person or persons named in such order, and in such manner and on such terms as the Court or Judge may think desirable, of any goods, wares or merchandize, which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

3. It shall be lawful for the Court or a Judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorize any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purposes of obtaining full information or evidence.

4. It shall be lawful for any Judge, by whom any cause or matter may be heard or tried with or without a jury, or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein.

5. The provisions of rule 3 of this order shall apply to inspection by a jury, and in such cases the Court or a Judge may make all such orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury at such time and place, and in such manner as they or he may think fit.

6. An application for an order for mandamus, injunction or receiver may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the sub-section 14, section 13, of the principal Act, it may be made either *ex parte* or with notice, and if for an order under rule 2 or 3 of this order it may be made after notice to the defendant at any time after the issue of the writ, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

7. An application for an order under rule 1 of this order may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge.

8. Where an action is brought to recover, or a defendant in his defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct; and that, upon such payment into Court being made, the property claimed be given up to the party claiming it.

9. Where any real or personal estate forms the subject of any proceedings in equity, and the Judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Judge may, at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such time as the Judge shall direct.

10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a Judge shall otherwise direct.

11. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the same effect which a writ of injunction previously had.

12. In any cause or matter in which an injunction has been, or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a Judge may grant the injunction, either upon or without terms, as may be just.

13. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer.

14. The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action.

15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the Queen's half of the composition shall be paid into the hands of the Chief Clerk and Registrar, or other proper officer of the Court, for the use of Her Majesty.

## II.—Receivers.

16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a Judge and taken before a person authorized to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the Court or Judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the form in appendix K, unless the Court or a Judge shall otherwise order.

17. When a receiver is appointed with a direction that he shall pass accounts, the Court or Judge may fix the days upon which he shall (annually, or at longer or shorter periods), file and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to

be paid by him. And with respect to any such receiver as shall neglect to file and pass his accounts and pay the balances thereof at the times so to be fixed, or to be otherwise ordered, for that purpose as aforesaid, the Judge before whom any such receiver is to account may from time to time disallow the salary claimed by such receiver, and may also, if he shall think fit, charge him with interest at the rate of five per cent per annum upon the balances neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver.

18. Receivers' books and accounts shall be filed and deposited in the Clerk's office.

## ORDER XLII.

### Motions and other Applications.

1. Where by these rules any application is authorized to be made to the Court or a Judge, such application shall be made by motion.

2. No motion or application for a rule *nisi* or order to show cause shall hereafter be made in any action, or (*a*) to set aside, remit, or enforce an award, or (*b*) for attachment, or (*c*) to answer the matters in an affidavit, or (*d*) to strike off the rolls, or (*e*) against a sheriff to pay money levied under an execution.

3. Except where according to the practice existing at the time of the passing of the principal Act any order or rule might be made absolute *ex parte* in the first instance, and except where notwithstanding rule 2 a motion or application may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or a Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set it aside.

4. Every notice of motion to set aside, remit, or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

5. Unless the Court or a Judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion: provided that, in applications to answer the matters in an affidavit or to strike off the rolls, the notice of motion shall be served on the parties not less than four clear days before the time fixed by the notice for making the motion

6. If on the hearing of a motion or other application the Court or a Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or a Judge may think fit to impose.

7. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit.

8. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or any petition or order upon any defendant, who, having been duly served with a writ to appear, has not appeared within the time limited for that purpose.

9. The plaintiff may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ, or at any time after service of the writ and before the time limited for the appearance of such defendant.

10. No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal, (if not represented by a solicitor), or by his solicitor, calling upon the Sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such Sheriff.

11. Every order, if and when drawn up, shall be dated the day of the week, month, and year, on which the same was made, unless the Court or a Judge shall otherwise direct, and shall take effect accordingly.

12 Unless the Court or a Judge gives leave to the contrary, there must be at least two clear days between the service and the day appointed for hearing a petition

13. All petitions, orders, statements, affidavits, and other written proceedings for the opinion, advice, or direction of a Judge, under the 13th section of chapter 84 of these Consolidated Statutes, shall be intituled in the matter of that chapter, and in the matter of the particular trust, will, or administration, and every such petition or statement shall state the facts concisely, and shall be divided into paragraphs numbered consecutively.

14. The opinion, advice, or direction of the Judge, shall be passed and entered and remain as of record in the same manner as any order made by the Court or a Judge, and the same shall be termed "a judicial opinion," or "judicial advice," or "judicial direction," as the case may be

## ORDER XLIII.

### I.—Action of Mandamus.

1. The plaintiff, in any action in which he shall claim a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon or attach it to the writ.

2. If judgment be given for the plaintiff, the Court or Judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the Court or a Judge to be just, to perform the duty in question The Court or a Judge may also extend the time for the performance of the duty.

3. No writ of mandamus shall hereafter be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had.

### II.—Prerogative Mandamus.

4. Application for a prerogative writ of mandamus shall be made according to the practice heretofore in use.

5. The Court or a Judge may, if they or he think fit, order that any writ of mandamus shall be peremptory in the first instance.

6. Every writ of mandamus shall bear date on the day when it is issued, and shall be tested in like manner with other writs. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as the Court thinks fit.

7. Any person by law compellable to make any return to a writ of mandamus shall make his return to the first writ.

8. When any return is made to a writ of mandamus, other than an unconditional compliance therewith, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action; and, subject to these rules, this pleading and all subsequent proceedings, including pleadings, trial, judgment and execution, shall proceed and may be had and taken as if in an action.

9. Where a point of law is raised in answer to a return or any other pleading in a mandamus, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law, give judgment for the successful party without any motion for judgment being made or required.

10. Where, under rules 8 and 9, the applicant obtains judgment, he shall be entitled forthwith to a peremptory writ of mandamus to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue.

11. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus issued by the Supreme Court or any Judge thereof.

12. When it appears to the Court that the respondent claims no right or interest in the subject-matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment, shall still be made and proceed in the name of the person to whom the writ is directed; but if the Court thinks fit so to order, may be expressed to be made on behalf of the persons really interested therein. In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant it shall likewise be given for or against the persons on whose behalf the return is expressed to be made; and, if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases.

13. Where, under the last preceding rule, the return to a writ of mandamus is expressed to be made on behalf of some persons other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation, or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded it shall be directed to the successor in office or right of that person.

14. The provisions of Order XXXVIII, Rule 18, and those relating to the practice of amendment, special case, affidavits, motions, interpleader, appeals, time, costs, notices, non-compliance, &c, shall apply to mandamus so far as the nature of the case will admit.

## ORDER XLIV.

### Applications and Proceedings at Chambers.

1. Every application at Chambers shall be made by summons.

2. An originating summons, when service is necessary, shall be served four clear days before the return thereof. Every other summons shall be served two clear days before the return thereof, unless in any case it may be otherwise ordered.

3. An originating or other summons shall be signed by the Judge granting the same, and no seal shall be necessary, and when issued shall be entered in a book to be called "The Summons Book."

4 Where any of the parties to a summons fail to attend, whether upon the return or at any time appointed for the consideration or further consideration of the matter, the Judge may proceed *ex parte*, if, consider-

ing the nature of the case, he thinks it expedient so to do; no affidavit of non-attendance shall be required or allowed, but the Judge may require such evidence of service as he may think just.

5. Where the Judge has proceeded *ex parte*, such proceeding shall not in any manner be reconsidered in the Judge's Chambers, unless the Judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the Judge, who may fix the same at the time, and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just.

6. Where a proceeding in chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed *ex parte*, the Judge may order such an amount of costs (if any) as he shall think reasonable, to be paid to the party attending, by the absent party or by his solicitor personally.

7. Where matters in respect of which summonses have been issued are not disposed of upon the return, the parties shall attend from time to time without further summons at such time or times as may be appointed for the consideration or further consideration of the matter.

8. In every cause or matter where any party thereto makes any application at chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court or Judge; and upon the hearing of such application it shall be lawful for the Court or Judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the Judge thinks fit, be adjourned from Chambers into Court, or from Court into Chambers.

9. Any Judge attending in chambers at the return of a summons, may hear it in the absence of the Judge issuing the summons.

10. A summons, other than an originating summons shall be in the form hereinafter provided in appendix J, with such variations as circumstances may require, and shall be addressed to all the persons on whom it is to be served.

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## ORDER XLV.

### Interpleader.

1. Relief by way of interpleader may be granted—

(*a.*) Where the person seeking relief (in this order called the applicant) is under liability for any debt, money, goods, or

chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this order called the claimants) making adverse claims thereto;

(*b.*) Where the applicant is a sheriff or other officer charged with the execution of process, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued.

2. The applicant must satisfy the Court or a Judge by affidavit or otherwise—

(*a.*) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and

(*b.*) That the applicant does not collude with any of the claimants; and

(*c.*) That the applicant is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a Judge may direct.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another.

4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ.

5. The applicant may take out an order calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

6. If the application is made by a defendant in an action the Court or a Judge may stay all further proceedings in the action.

7. If the claimants appear in pursuance of the order, the Court or a Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant.

8. The Court or a Judge may, if, having any regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.

9. Where the question is a question of law, and the facts are not in dispute, the Court or a Judge may either decide the question without

directing the trial of an issue, or order that a special case be stated for the opinion of the Court. If a special case is stated, Order XXXI. shall, as far as applicable, apply thereto.

10. If a claimant, having been duly served with an order calling on him to appear and maintain or relinquish his claim, does not appear in pursuance thereof, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a Judge may make an order declaring him, and all persons claiming under him, for ever barred against the applicant and persons claiming under him; but the order shall not affect the rights of the claimants as between themselves.

11. Except where otherwise provided by statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court or a Judge in a summary way, under rule 8 of this order, shall be final and conclusive against the claimants and all persons claiming under them, unless by special leave of the Court or Judge, as the case may be.

12. When goods or chattels have been seized by a sheriff or other officer charged with the execution of process, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or Judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

13. Orders XXVIII and XXXII. shall, with the necessary modifications, apply to an interpleader issue; and the Court or Judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending, such order may be made by the Court or Judge before whom the interpleader proceeding may be taken, and shall be intituled in all such causes or matters; and any such order (subject to the right of application for a new trial as in other cases) shall be binding on the parties in all such causes or matters.

15. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

## ORDER XLVI.

### Probates, Administration, Trusts, &c.

1. Letters of administration or probates of will in common form may be granted by the Supreme Court or a Judge thereof, in St. John's or on Circuit, upon petition and affidavit, notice of application therefor having been put up in the Clerk's office three days before making the same, where

the application is made in St. John's, and if and as long as may be required by the Judge on Circuit.

2. Where a caveat to such application shall be entered before rule or fiat shall be made, or when, in the opinion of the Court or Judge, sufficient objection shall appear against a grant of letters of administration or probate, before granting the same all parties concerned therein (or so many of them as the Court or Judge may consider necessary) shall be cited by writ of summons to appear and plead to the claim for administration or probate, and the said Court or Judge, after default or trial, as the case may be, shall make such order touching the premises as to justice shall appertain.

3. A will may be required to be proved in solemn form on the petition, verified by affidavit, of one claiming as executor, or having, or desiring to have execution of the alleged will, or by any person interested in the will or in the estate of the alleged testator, for a writ of summons upon such parties as the Court or Judge may direct to appear and plead to the claim for such proof.

4 The respective clerks or commissioners on circuit shall, at the close of each term, return to the office of the Chief Clerk and Registrar of the Supreme Court in St. John's, a list of probates and letters of administration granted on circuit during such time, together with the original wills of which probate or administration *cum testamento annexo* may have been granted, and the several administration bonds which may have been taken during such terms—the said clerks or commissioners having taken and filed correct copies of said original wills—which returns shall be entered in the book of acts of the Supreme Court of this island by the said Chief Clerk and Registrar, and when so entered shall be as effectual in evidence, and for all other purposes, as if the probate or administration had been granted by the said Supreme Court in St. John's; and in case of the loss of any original will in course of transmission to the Chief Clerk and Registrar at St. John's, or otherwise, the copy of such will, to be taken and filed in manner aforesaid, shall be of equal avail for entering in the books of acts, and for all other purposes as the original.

5. The Supreme Court or Judge may on motion or petition, or otherwise in a summary way, whether any suit or other proceedings shall or shall not be pending with respect to any probate or administration, order any person to produce and bring into Court or into the Clerk's office, or otherwise as the Court or Judge may direct, any paper or writing being or purporting to be testamentary, which may be shewn to be in the possession or under the control of such person; and if it be not shewn that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court or Judge may direct such person to attend for the purpose of being examined in open Court, or upon interrogatories respecting the same, and such person shall

be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made such default; and the costs of any such motion, petition or other proceeding, shall be in discretion of the Court or Judge.

6. Application may be made to the Court or Judge for any of the following purposes, that is to say; for an account of an estate or for the administration or distribution of an estate or of a trust, or for the payment or delivery of a legacy or for the appointment of a receiver or of a guardian to the person or property of an infant or of a natural fool, or of such as are or shall be deprived of their reason or understanding, or for any matter or thing concerning the execution of the trusts or provisions of any will, deed, or instrument, or for the removal of any executor, administrator, receiver, guardian or trustee, or for the appointment of a trustee to the property of a married woman, or of new trustees in the place of trustees appointed by any will, conveyance or otherwise, in the event of the death or absence of such former trustees, or their refusal to act, or being desirous of being relieved of such trust, or acting improperly, or becoming disqualified for any cause. Such application shall be made by petition, filed in the Clerk's office, verified by affidavit and supported by such other affidavits as may be thought necessary, setting forth succinctly the facts and circumstances of the case; and thereupon the said Court or Judge may grant an order on any party or parties interested, returnable on a day to be specified therein, to answer such petition, and on hearing said parties or their counsel, and the affidavits, depositions, or evidence by them respectively produced, shall grant or refuse the prayer of such petition, or make such other order or orders in the premises as justice shall require.

7. When an executor or administrator, to whom probate or administration has been or may be granted, shall depart from and remain absent from this colony for the period of one year without having appointed a responsible attorney to act for and represent him, in either case the Supreme Court or a Judge may, on petition verified by oath, shewing to the satisfaction of the said Court or Judge that the interests of parties concerned in the estate are or will be prejudiced by the absence of such executor or administrator, appoint an administrator with the will annexed, or administrator *de bonis non*, as the case may be, who shall respectively, during the absence of such executor or administrator, on giving sufficient security, have, possess, and exercise, all and singular the same power and authority as the executor or administrator so absent as aforesaid, if personally present. And in case of contest proceedings shall and may be similar to those provided under the second rule of this order.

8. Under special circumstances, where it may appear to the Court or Judge to be just or expedient administration or probate may be granted

to some person other than the person ordinarily or by law entitled to such administration or probate.

9. No administration shall be issued, or guardian or receiver of property appointed, until security to the satisfaction of the Court or Judge shall be given by such administrator, guardian, or receiver, for the faithful discharge of his duties, unless the Court or a Judge shall otherwise order.

10. Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration, the Court or Judge of probate may appoint an administrator of the estate of such deceased person, and the administrator so appointed shall have all the rights and powers of a general administrator other than the right of distributing the residue of such estate, and every such administrator shall be subject to the immediate control of the Court or Judge, and act under its or his direction.

11. After any grant of administration no person shall have power to sue or prosecute any suit, or otherwise act as executor of the deceased, as to the estate comprised in or affected by such grant of administration, until such administration shall have been recalled or revoked.

12. Where, before the revocation of any temporary administration, any proceedings have been commenced by or against any administrator so appointed, the Court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration and of the grant of probate or administration which shall have been made consequent thereupon, and that the proceedings shall be continued in the name of the new executor or administrator in like manner as if the proceedings had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as such Court may direct.

13. Where any probate or administration is revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall be a legal discharge to the person making the same, and the executor or administrator who shall have acted under any such revoked probate or administration, may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or administration shall be afterwards granted, might have lawfully made.

14. All persons and corporations making, or permitting to be made, any payment or transfer, *bona fide*, upon any probate or letters of administration granted in respect of the estate of any deceased person, under the authority of this order, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration.

15. Where any person renounces probate of the will, of which he is appointed executor, or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator, and the administration of his effects shall, and may, without any further renunciation, go, devolve, and be committed in like manner, as if such person had not been appointed executor.

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## ORDER XLVII.

### Time.

1. Where by these rules, or by any judgment or order given or made after the commencement of the principal Act, time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these rules, such time shall be computed by calendar months, unless otherwise expressed.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday, shall not be reckoned in the computation of such limited time.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

4. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter.

5. The Court or a Judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

6. The time for delivering, amending, or filing any pleading, answer, or other document, may be enlarged by consent in writing, without application to the Court or a Judge.

7. Service of pleadings, notices, orders, rules, and other proceedings, shall be effected before the hour of five in the afternoon except on Satur-

days, when it shall be effected before the hour of two in the afternoon. Service effected after five in the afternoon on any week-day except Saturday, shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall, for the like purpose, be deemed to have been effected on the following Monday.

8. In any case in which any particular number of days, not expressed to be clear days, is prescribed by these rules, the same shall be reckoned exclusively of the first day and inclusively of the last day.

9. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed An application on which no order has been made shall not, but notice of trial, although countermanded, shall be deemed a proceeding within this rule.

10. An application to set aside an award must be made either in Court or to a Judge within ten days next after such award has been made and published to the parties, unless the Court or Judge before or after the expiration of such time shall otherwise order.

## ORDER XLVIII.

### Originating Summonses.

1. An originating summons is one by which proceedings are originated without writ, or which now is or hereafter by law or orders may be preceded only by *ex parte* petition or affidavit at the commencement of the proceedings, and in which the Court or Judge may order that persons not parties to the petition should be summoned.

2. An originating summons shall be in the form hereinafter prescribed in appendix J, No. 32, with such variations as circumstances may require.

3. Executors and administrators, trustees under any deed or instrument, trustees under insolvency, creditors, legatees, and next-of-kin, *cestuis que trust*, and persons claiming by assignment or otherwise under such person, may take out, as of course, an originating summons returnable in chambers for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require, (that is to say) the determination, without an administration of the estate or trust, of any of the following questions or matters:—

(*a.*) Any question affecting the rights or interests of the person claiming to be creditor, legatee, next-of-kin, or *cestui que trust*, and the proof and payment of his claim;

(*b.*) The ascertainment of any class of creditors, legatees, next-of-kin, or others;

(*c.*) The furnishing of any particular accounts by the executors, or administrators, or trustees, and the vouching (when necessary) of such accounts:

(*d.*) The payment into Court, or to the parties, or otherwise, of any money in the hands of the executors, or administrators, or trustees;

(*e.*) Directing the executors, or administrators, or trustees, to do or abstain from doing any particular act in their character as such executors, or administrators, or trustees:

(*f.*) The approval of any sale, purchase, compromise, or other transaction;

(*g.*) The determination of any question arising in the administration of the estate or trust.

4. Any of the persons named in the last preceding rule may, in like manner, apply for and obtain an order for—

(*a*) The administration of the estate of the deceased;

(*b.*) The administration of the trust.

5. The persons to be served with the summons under the last two preceding rules in the first instance, shall be the following, that is to say:

A. Where the summons is taken out by an executor, or administrator, or trustee—

(*a.*) For the determination of any question, under sub-sections (*a*), (*e*), (*f*) or (*g*), of rule 3, the persons, or one of the persons, whose rights or interests are sought to be affected;

(*b.*) For the determination of any question, under sub-section (*b*) of rule 3, any member, or alleged member, of the class;

(*c.*) For the determination of any question, under sub-section (*c*) of rule 3, any person interested in taking such accounts;

(*d.*) For the determination of any question, under sub-section (*d*) of rule 3, any person interested in such money;

(*e.*) For relief under sub-section (*a*) of rule 4, the residuary legatees, or next of kin, or some of them;

(*f.*) For relief under sub-section (*b*) of rule 4, the *cestuis que trust*, or some of them;

(*g.*) If there are more than one executor, or administrator, or trustee, and they do not all concur in taking out the summons, those who do not concur.

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

6. Any mortgagee, mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out, as of course, an originating summons returnable in Chambers, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is to say:—

(*a.*) Sale, foreclosure, delivery of possession by the mortgagor, redemption, re-conveyance, delivery of possession by the mortgagee.

7. The persons to be served with the summons, under the last preceding rule, shall be such persons as under the existing practice in equity would be the proper defendants to an action for the like relief as that specified by the summons.

8. The Court or a Judge may direct such other persons to be served with the summons as they or he may think fit.

9. The application shall be supported by such evidence as the Court or a Judge may require, and directions may be given as they or he may think just for the trial of any questions arising thereout

10. It shall be lawful for the Court or a Judge, upon such summons, to pronounce such judgment, as the nature of the case may require.

11. The Court or a Judge may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as they or he may think just.

12. It shall not be obligatory on the Court or a Judge to pronounce or make a judgment or order for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

13. The issue of a summons under rule 3 of this order, shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

14. Parties served with an originating summons must enter an appearance in the Chief Clerk's office before they are heard.

### Assistance of Experts.

15. The Court or a Judge may, in such way as may be thought fit, obtain the assistance of accountants, merchants, engineers, actuaries, and

other scientific persons, the better to enable any matter to be determined, and the certificate of any such person may be acted upon

ATTENDANCES

16. Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the Court or Judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings; and where the parties constituting any class cannot agree upon the solicitor to represent them, the Court or Judge may nominate such solicitor for the purpose of the proceedings before him; and where any one of the parties constituting such class declines to authorize the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the Court or Judge, with respect to which such nomination shall have been made, and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so to be nominated.

17. Whenever in any proceeding before a Court or Judge the same solicitor is employed for two or more parties, such Court or Judge may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceedings until such party is so represented.

18. Any parties other than those who shall have been directed to attend may attend at their own expense and upon paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who shall have been directed to attend.

ADVERTISEMENTS FOR CREDITORS AND CLAIMANTS.

19. Where a judgment or order is given or made, whether in Court or in Chambers, directing an account of debts, claims, or liabilities, or an inquiry for next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement, shall be excluded from the benefit of the judgment or order.

INTEREST.

20. Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts, to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of five per cent. per annum from the date of the judgment or order.

### Master's Reports.

21. A master's report (subject to further directions) shall be confirmed as of course, unless, within four days, or such further time as may be allowed by the Court or Judge, after filing the report of the master, (notice to the parties having been given of the report being made) any party concerned shall give notice to the other parties of and file and serve exceptions. Such exceptions shall be heard at a time to be appointed on motion of any party to the proceedings, when the report may be confirmed, varied, or remitted for further consideration to the same or any other master. The report and proceedings therein, or so much as shall be necessary, shall be entered up with the judgment.

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## ORDER XLIX.

### Notices, Printing, Paper, Copies, Office Copies, Minutes, &c.

1. All notices required by these rules shall be in writing, unless expressly authorized by the Court or a Judge to be given orally.

2. All accounts, copies and papers shall be written upon uniform foolscap paper, bookwise, unless the nature of the document renders it impracticable.

3. Proceedings required to be printed shall be printed on folio paper, with an inner margin about three-quarters of an inch wide, and an outer margin about two inches wide.

4. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

5. Where, pursuant to these rules, any pleading, notice, special case, petition, deposition, affidavit, or other document is to be printed, and where any printed or other office copy of any such document is to be taken, the following regulations shall be observed:—

(*a.*) The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by rule 3 of this order;

(*b.*) To enable the party printing to print any deposition or affidavit, the officer with whom it is filed shall, on demand, permit such party to take a copy;

(*c.*) The party printing shall, on demand in writing, furnish to any other party any number of printed copies, not exceeding ten, upon payment therefor at the rate of two cents per folio for one copy, and one cent per folio for every other copy:

(*d.*) As between a solicitor delivering any printed copies and his client, credit shall be given by the solicitor for the whole amount payable by any other party for such printed copies;

(*e*) The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the Court or Judge shall otherwise direct;

(*f*.) The party by or on whose behalf any deposition, affidavit or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy: such copy shall be a copy printed as above provided, where such deposition or affidavit is to be printed;

(*g*.) The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates;

(*h*.) Where any party is entitled, on notice or demand, to a copy of any deposition, affidavit, proceeding or document filed or prepared by or on behalf of another party, which is not required to be served with the original proceedings, or which is not required to be printed, such copy shall be furnished by the party by whom or on whose behalf the same has been filed or prepared;

(*i*) The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or a Judge may in any case direct, and is to be furnished accordingly upon demand and pay of the proper charges;

(*j*.) It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party;

(*k*.) The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original or of an office copy of the original, of which it purports to be a copy, as the case may be;

(*l*.) The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner, and paged uniformly with the printed copies;

(*m*.) In case any party or solicitor who shall be required to furnish any such written copy as aforesaid, shall either refuse, or, for

twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be payable to the solicitor so making default in respect of the copy so applied for;

(*n.*) Where proceedings are important or voluminous the Court or Judge may order documents to be printed, and where, by any order of the Court or a Judge, any pleading, evidence, or other document is ordered to be printed, the Court or Judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

## ORDER L.

### I.—Orders, Services, &c.

1. When an order of which service is to be effected is made, either the original or an office copy shall be filed.

2. It shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited, and then only if required by the party served.

3. All writs, notices, pleadings, warrants and other documents, proceedings and written communications in respect of which personal service is not requisite, shall be sufficiently served if left within the prescribed hours at the address for service of the person to be served.

4. Notices sent from any office of the Supreme Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

5. Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address for service as required by Orders IV. and XII., all writs, notices, pleadings, orders, warrants, and other documents, proceedings and written communications in respect of which personal service is not requisite, may be served by filing them with the proper officer.

6. Where personal service of any writ, notice, pleading, order, warrant, or other document, proceeding or written communication is required by these rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons.

7. Where personal service of any writ, notice, pleading, order, warrant, or other document, proceeding or written communication is required by these rules or otherwise, and it is made to appear to the Court or a

Judge that prompt personal service cannot be effected, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just.

8. Where a party after having sued or appeared in person has given notice in writing to the opposite party, or his solicitor, through a solicitor, that such solicitor is authorised to act in the cause or matter on his behalf, all writs, notices, pleadings, orders, warrants, and other documents, proceedings, and written communications, which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor.

9. Affidavits of service shall state when, where and how, and by whom, such service was effected.

## ORDER LI.

### Application of Rules in Crown and Revenue Cases.

1. Subject to the provisions of this order, nothing in these rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters.

(*a.*) Criminal proceedings;

(*b.*) Proceedings on the Crown side of the Court;

(*c.*) Proceedings on the Revenue side of the Court.

2. The following orders shall, as far as they are applicable, apply to all civil proceedings on the Crown side of the Court, including mandamus and prohibition, and also to *quo warranto*, and to all proceedings in revenue matters, namely:—

(*a.*) Order XXVII. (Amendment);

(*b.*) Order XXXI. (Special case);

(*c.*) Order XXXIV. (Affidavits);

(*d.*) Order XLII. (Motions);

(*e.*) Order XLVII. (Time);

(*f.*) Order XLIX. (Notices, &c.);

(*g.*) Order LII. (Non-compliance).

3. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assesssment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages.

## ORDER LII.

### Effect of Non-Compliance.

1. Non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or a Judge shall so direct; but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

2. No application to set aside any proceedings for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the notice of motion or order.

4. When an order is taken out to set aside any process or proceeding for irregularity with costs, and the order or application is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.

## ORDER LIII.

### Miscellaneous Rules.

1. Consolidation of causes or matters may take place by order of the Court or Judge as in manner heretofore in use.

2. Writs, causes, and matters may at any time be transferred to or from the circuits, and from one place to another, or from one judicial district to another, by order of the Court or Judge.

3. Proceedings in actions of replevin shall be commenced by writ of summons and statement of claim instead of declaration, and the action shall be pleaded to and proceeded with to final judgment as in other cases.

4. In actions upon written instruments, in which any of the parties are designated by the initial letter or letters, or some contraction of the christian or first name or names, or in cases in which the party's name is only known by such initial or contraction, it shall be sufficient in all proceedings to designate such person by such initials or contraction.

## ORDER LIV.

### Practice of the Supreme Court on Circuit.

1. The foregoing orders and rules shall, so far as they are applicable, be the practice of the Supreme Court on circuit, subject to the provisions of this order, and to particular orders and directions of the Court or Judge in any action or matter.

2. The writs shall be returnable out of Saint John's "on the first day of next term" in any given place, or upon a named day in term.

3. The appearance need not be filed, and may be made by the Clerk of the Court making an entry on the writ and in his record book, of the defendant's appearance either in person or by his solicitor, with his address.

4. The defence (where no solicitor appears) shall be entered in short terms or by the known title and effect of a defence, by a clerk upon the writ or upon a paper annexed thereto, and a memorandum thereof shall be made in his record book. Where a solicitor appears he shall enter the defence in manner aforesaid or more fully if he so desires. Where an account is involved in the defence it shall be furnished by the defendant and annexed to the proceeding.

5. All other pleadings, after statement of claim, shall be entered as nearly as may be according to the preceding rule.

6. The verdict or [and] judgment shall be entered upon or with the writ and pleadings, and be noted in the record book.

7. Actions shall be tried on the return day of the writ unless otherwise allowed or ordered by the Judge.

8. The defendant must be distinctly called upon in open Court to appear, and in cases of default an affidavit of service of the writ and claim must be filed before judgment. The Judge may, or may not on default require evidence of the amount due in actions of debt, or liquidated demand, or of title in actions of ejectment. Where it shall appear to the Court that from remoteness of residence or other cause a defendant has not had sufficient time to appear, the trial shall be postponed for such time as the Judge may direct.

9. In applications for probate or letters of administration, the Court or Judge may dispense with notice of application.

10. A seal shall be unnecessary on probate and letters of administration granted on circuit. The signature of a Judge or of a clerk or commissioner shall be sufficient.

11. An action on circuit not wholly concluded there may, although not transferred, be proceeded with by the Court or Judge in St. John's to final judgment as if on circuit.

12. New trial, and reviews of judgments, findings or orders on circuit may be had in cases similar to those in which the same may be had in St. John's. When it is intended to make an application (where it is allowable by the foregoing rules) to two or more Judges, a notice of application setting out the grounds thereof must be filed with the officer of the Court on circuit and brought to the notice of the Judge on circuit within two days from the time of the decision sought to be reviewed unless the time be extended.

Appendix A.

# APPENDIX A.

No. 1.—Writ of Summons.

*In the Supreme Court of Newfoundland.*

Between A. B., Plaintiff,
and
C. D. and E. F., Defendants.

Victoria, by the Grace of God, etc.

To the Defendants:

We command you that within four days (*eight days*, if served in a Judicial District other than that in which the writ is returnable, or *the time directed by the Court or Judge* when the service is on one or more of the defendants out of the jurisdiction) after the service of this writ or of notice of this writ with statement of claim on you, inclusive of the day of such service, you do cause an appearance and defence to be entered for you in this Court in this action, and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness , Chief Justice, the day of , in the year of our Lord one thousand eight hundred and .

(Signed), ——— ———,
*Commissioner.*

(Name of Plaintiff or Plaintiff's Solicitor, and his address.)

*Memorandum to be subscribed on the Writ.*

N. B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances), either personally or by solicitor, in the chief clerk and registrar's office in St. John's.

No. 2.—Writ of Attachment.

*In the Supreme Court of Newfoundland.*

Between A. B., Plaintiff,
and
C. D., Defendant.

Victoria, &c.

To the Sheriff of the district and his Deputies, Greeting:

We command that you attach the above named defendant by his lands and chattels, goods, debts and effects, that he do within four days (*eight* days, or the time directed by the Court or a Judge, as the case may be) after the service of this writ, with statement of claim on him, inclusive of the day of such service, cause an appearance and defence to be entered for him in this Court in this action; and notice is hereby given, that in default of his so doing, the plaintiff may proceed therein and judgment may be given in his absence.

Witness, &c.

By the Court,

(Signed), ——— ———,
*Commissioner.*

(Name of Plaintiff or Plaintiff's Solicitor, and his address.)

(If by order of Judge),

By order of Mr. Justice , for the sum of $ .

[*Memoranda to be subscribed, as in Form 1.*]

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No. 3.—Writ of Capias ad Respondendum.

*In the Supreme Court of Newfoundland.*

Between A. B, Plaintiff,
and
C. D., Defendant.

Victoria, &c.

To the Sheriff of the District of Newfoundland and his Deputies, Greeting:

We command that within one calendar month from the date hereof, and not after, without further order, you take the above named defendant and him safely keep unless and

Appendix A. (Continued.)

until he shall have deposited with you the sum of $ or given bail to you, the said Sheriff, or given to the plaintiff a bond or some other security satisfactory to the plaintiff to abide the judgment in this cause or until he be discharged in due course of law, * [and also to the end that he do within days, (*as directed in preceding forms*), after service of this writ, with statement of claim, cause an appearance and defence to be entered in this action; and notice is hereby given that in default of defendant so doing the plaintiff may proceed to judgment.]

Witness, &c.

By the Court,

(Signed), ——— ———,
*Commissioner.*

(Name of Plaintiff or Plaintiff's Solicitor, and his address.)

By order of Mr. Justice , for the sum of $ .

* N. B.—The remainder will be omitted when the arrest is made after appearance and before judgment.

No. 4.—Notice of Writ in lieu of Service to be given out of the Jurisdiction.

[*Heading as in Form 1.*]

To G. H , of

Take notice, that A. B , of , has commenced an action against you in the Supreme Court of Newfoundland, by writ of that Court, dated the day of , A. D. 18 : which writ had a statement of claim therewith, as follows (or as heretofore annexed) and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance and defence to be entered for you in the said Court to the said action; and in default of your so doing, the said A. B. may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally, or by your solicitor, at the Chief Clerk and Registrar's office, at St. John's, Newfoundland, (or as the case may be)

(Signed), A. B., of , &c.

Or, X. Y., of , &c

Solicitor for A. B., of , &c.

Appendix A. (Continued

No 5.—Writ of Summons returnable on Circuit.

*In the Supreme Court of Newfoundland on Circuit.*

Between A. B., Plaintiff,
and
C. D., Defendant.

Victoria, &c.

To the above-named Defendant:

We command you that you be before our Supreme Court on circuit, at , on the first day of next term, (if the writ be returnable after term commences, say on , the day of , A. D. 18 ), to answer the complaint of the plaintiff contained in the statement of claim herewith.

In default of your appearing and defending judgment will be given against you by default.

Witness the Honourable (Judge presiding or who has last presided on circuit) the day of , A. D. 18 .

By the Court,

(Signed), ——— ————,
*Commissioner.*

(Name of Plaintiff or Plaintiff's Solicitor, and his address.)

---

No. 6.—Form of Appearance, Ordinary.

[*Heading as in Form 1.*]

Appearance for C. D., defendant.

Dated the day of , 18

(Signed), C. D.
Or, E. F.,
Solicitor for C. D.

Address for service.

---

No. 7.—Notice of Entry of Appearance.

[*Heading as in Form 1.*]

Take notice, that I have this day entered an appearance and defence at for the defendant to the writ in this action.

Dated the day of , 18 .

(Signed), ——— ————.
(Name and address of party or his Solicitor.)

Appendix A. (Continued.

No. 8.—Entry of Appearance on Notice.

[*Heading as in Form 1.*]

Appearance for to the notice issued in this action on the day of , 18 , by the defendant.

Dated the day of , 18 .

(Signed), —— ————.

(Name and address of party or his Solicitor.)

---

No. 9.—Notice Limiting Defence.

[*Heading as in Form 1.*]

Take notice that the [*above-named*] defendant has appeared to the writ and limits his defence to part only of the property mentioned in the writ of summons, namely to the close, called "The Big Field," (or so much of the land, describing boundaries or situation and extent).

Dated the day of , 18 ,

(Signed), —— ————

(Name and address of party or his Solicitor.)

To Messrs.

The Plaintiff's Solicitors.

---

No. 10.—Entry of Appearance limiting Defence.

[*Heading as in Form 1.*]

Appearance for the defendant in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to the close called "The Big Field," (or, as above).

Dated the day of , 18 .

(Signed), —— ————

(Name and address of party and his Solicitor.)

No. 11.—Entry of Appearance on Order.

[*Heading as in Form 1.*]

Appearance for , who has been served with an order dated the day of to carry on and prosecute the proceedings in this action.

Dated the day of , 18 .

(Signed), —— ————

(Name and address of party or his Solicitor.)

No. 12.—Entry of Appearance to Counter Claim.

[*Heading as in Form 1.*]

Appearance for to the counter-claim of the above-named defendant in this action.

Dated the day of , 18 .

(Signed), —— ————

(Name and address of party or his Solicitor.)

No. 13.—Affidavit for Entry of Appearance as Guardian.

[*Heading as in Form 1.*]

I, , of , make oath and say as follows:—

A. B., of , is a fit and proper person to act as guardian *ad litem* of the above named infant defendant, and has no interest in the matters in question in this action [matter] adverse to that of the said infant, and the consent of the said A. B. to act as such guardian is hereto annexed.

Sworn, &c.

[*To this Affidavit shall be annexed the document signed by such guardian in testimony of his consent to act.*]

No. 14.—Statements of Character of Parties.

The plaintiff's claim is as executor (or administrator, or trustee in insolvency of the estate of , or as trustee under, &c., as the case may be) of C. D., deceased, for, &c.

Appendix A. (Continued.)

The plaintiff's claim is against the defendant A. B., as executor [or, &c.] of C. D, deceased, for, &c.

The plaintiff's claim is against the defendant A. B., as executor of X. Y., deceased, and against the defendant, C. D., in his personal capacity for, &c.

The claim of the plaintiff C. D., is as executor of X. Y., deceased, and the claim of the plaintiff A. B., as her husband for

The claim of the plaintiff is against the defendant, C. D., as executrix of the defendant C. D., deceased, and against the defendant A. B, as her husband, for

The plaintiff's claim is as public officer of

The plaintiff"s claim is against the defendant as public officer of

The plaintiff's claim is against the defendant A. B. as principal, and against the defendant C. D. as public officer, as security, for

The plaintiff's claim is as well for the Queen as for himself for

---

Appendix B.

# APPENDIX B.

*NOTICES, &c.*

No. 1.—Third Party Notice.

*In the Supreme Court of Newfoundland.*

Between A. B., Plaintiff,
and
C. D., Defendant.

Notice filed , 189 .

To

Take notice that this action has been brought by the plaintiff, against the defendant [as security for M. N., upon a bond conditional for payment of $2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are (his

co-surety under the said bond, or, also surety for the said M. N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A. D. )]. Appendix B. (Continued.)

*Or* [as acceptor of a bill of exchange for $500, dated the day of , A. D. , dawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

*Or* [as acceptor of a bill of exchange for $500, dated the day of , A. D. , drawn by you before and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

*Or* [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C. D. or your liability to the defendant C. D., you must cause an appearance and defence to be entered for you within four days after service of this notice.

In default of your so appearing and defending you will be deemed to admit the validity of any judgment obtained against the defendant C. D., and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the rules of the Supreme Court.

(Signed), —— ————.

(Name and address of party or his Solicitor.)

Appendix B. (Continued.)

No. 2.—Notice of Counter-Claim.

[*Heading as in Form 1.*]

To the within-named X. Y.:

Take notice that if you do not appear to the within counter-claim of the within-named C. D. within eight days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

---

No. 3.—Notice of Payment into Court.

[*Heading as in Form 1.*]

Take notice that the defendant has paid into Court $ and says that the sum is enough to satisfy the plaintiff's claim [*or the plaintiff's claim for, &c.*]

To Mr. X. Y.,

The Plaintiff's Solicitor.

Z.,
Defendant's Solicitor.

---

No. 4.—Acceptance of Sum paid into Court.

[*Heading as in Form 1.*]

Take notice that the plaintiff accepts the sum of $ paid by you into Court in satisfaction of the claim in respect of which it is paid in.

---

No. 5.—Confession of Defence.

[*Heading as in Form 1.*]

The plaintiff confesses the defence stated in the paragraph of the defendant's defence [or, of the defendant's further defence].

---

No. 6.—Interrogatories.

In the Supreme Court of Newfoundland.

Between A. B., Plaintiff,
and
C. D., E. F., and G. H., Defendants.

Interrogatories on behalf of the above-named [*plaintiff* or *defendant* C. D.] for the examination of the above-named [*defendant* E. F. and G. H., or *plaintiff*.]

1. Did not, &c

2. Has not, &c

&c., &c., &c.

[*The defendant* E. F. *is required to answer the interrogatories numbered* ].

[*The defendant* G. H. *is required to answer the interrogatories numbered* ].

---

No. 7.—Answer to Interrogatories.

[*Heading as in Form 6.*]

The answer of the above-named defendant E. F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows:—

---

No. 8.—Affidavit as to Documents.

[*Heading as in Form 1.*]

I, the above-named defendant C. D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

Appendix B. (Continued.)

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6 That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody or power of my solicitor or agents, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

---

No. 9.—Notice to produce Documents.

[*Heading as in Form 1.*]

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim*, or *defence*, or *affidavit, dated the day of , A. D. *].

[*Describe documents required.*]

X. Y.,
Solicitor for the

To *Z.*,
Solicitor for

---

No. 10.—Notice to inspect Documents

[*Heading as in Form 1.*]

Take notice that you can inspect the documents mentioned in your notice of the day of , A. D. , [*except the deed numbered in that notice*] at [*insert place of inspection*] on Thursday next the inst., between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of the documents mentioned in your notice of the day of , A. D. , on the ground that [*state the ground*]:—

No. 11.—Notice to admit Documents.

[*Heading as in Form 1.*]

Take notice that the plaintiff [or defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his solicitor or agent, at , on , between the hours of ; and the defendant [or plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

(Signed),

E. F., Solicitor [or agent] for defendant [or plaintiff].

To G. H., Solicitor [or agent] for plaintiff [or defendant].

[*Here describe the documents.*]

---

No. 12.—Notice to admit Facts.

[*Heading as in Form 1.*]

Take notice that the plaintiff [*or defendant*] in this cause requires the defendant [*or plaintiff*] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant [*or plaintiff*] is hereby required, within two days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

(Signed),

To E. F., Solicitor for the defendant [or plaintiff]

The facts, the admission of which is required, are—

1. That John Smith died on the 1st or January, 1879
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1876.
5. That Julius Smith never was married.

Appendix B. (Continued.)

No. 13.—Admission of Facts, Pursuant to Notice

[*Heading as in Form 1.*]

The defendant [or plaintiff] in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion, or by anyone other than the plaintiff [or defendant, *or party requiring the admission.*]

Dated, &c.

(Signed),

To G. H., Solicitor for the plaintiff [or defendant.]

| Facts admitted. | Qualifications or limitations, if any, subject to which they are admitted. |
|---|---|
| | |

No. 14.—Notice to Produce (general form).

[*Heading as in Form 1.*]

Take notice, that you are hereby required to produce and show to the Court on the trial of this all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this , and particularly

Dated

To

(Signed),

No. 15.—Issue.

[*Heading as in Form 1.*]

Whereas A. B. affirms, and C. D. denies, [*here state the question or questions of fact to be tried,*] and it has been ordered by the Hon Mr. Justice that the said question shall be tried [*here state mode of trial whether with or without a jury,*] therefore let the same be tried accordingly.

No. 16.—Notice of Trial.

[*Heading as in Form 1.*]

Take notice of trial of this [*or* of the issues in this ordered to be tried] [*or as the case may be,*] in two days hereafter.

X. Y., Plaintiff's Solicitor [*or as the case may be*].

Dated

To Z., Defendant's Solicitor [*or as the case may be*].

No. 17.—Notice of Motion.

[*Heading as in Form 1.*]

Take notice, that the Court will be moved on day, the day of , 18 , at o'clock in the forenoon, or so soon thereafter as Counsel can be heard, by that

Dated the day of , 18 .

(Signed),

To

No. 18.—Notice of Discontinuance.

[*Heading as in Form 1.*]

Take notice, that the plaintiff hereby wholly discontinues this action [or withdraws so much of his claim in this action, as relates to, &c.]

(If not against all the defendants, add "as against the defendants," &c.)

Dated the day of , 18 .

(Signed),

To

No. 19.—Notice of Cross-examination of Deponents at Trial.

[*Heading as in Form 1.*]

Take notice, that the intends at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

Appendix B. (Continued.)

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

Dated the day of , 18 .

(Signed),

To

*Schedule referred to.*

---

No 20.—Notice of Renewal of Writ of Execution.

[*Heading as in Form 1.*]

Take notice, that the writ of issued in this action directed to the Sheriff of , and bearing date the day of , 18 , has been renewed for one year, from the day of , 18 .

Dated the day of , 18 .

(Signed),

To the Sheriff of

---

No. 21.—Affidavit of Service of Order.

[*Heading as in Form 1.*]

I, , of , solicitor for the above-named make oath and say as follows:—

I did on the day of , 18 , before the hour of noon, serve the above-named in this action with a true copy of the order hereto annexed marked A, by leaving it at the of the said situate with , there (or, if no one there, "by .")

Sworn at
this
day of , 18

Before me

This affidavit is filed on behalf of the

---

No. 22.—Affidavit on Interpleader.

[*Heading as in Form 1.*]

I, , of , the defendant in the above action, make oath and say as follows:—

1. The writ herein was issued on the day of , 18 , and was served on me on the day of , 18 .

2. The action is brought to recover . The said is (or are) in my possession, but I claim no interest therein.

3. The right to the said subject matter of this action has been and is claimed * by one who †

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said in such manner as the Court may order or direct.

Sworn, &c.

* If claim in writing make the writing an exhibit.

† State expectation of suit, or that he has already sued.

---

# APPENDIX C.



Forms of Statements of Claim to be used.

*In the Supreme Court of Newfoundland.*

Between A. B., Plaintiff,
and
C. D., Defendant.

Statement of Claim.

The plaintiff, &c.

[*or*]

The plaintiff's claim is, &c.

[*To be filled up in manner exemplified in the following forms*]
The plaintiff claims [*as in following forms*]

(Signed),

Appendix C. (Continued.)

## STATEMENTS OF CLAIM.

### Debts and Liquidated Claims.

No. 1.

Common indebtedness.

The plaintiff's claim is for goods sold and delivered and general account.

1887.—Items; (*or, if it be so,* account furnished for this year)

1887.—(Credits) ... ... .. ... ... ... $

Balance due ... ... ... ... ... ...$

(Signed),

No. 2.

Money received, paid, and labor.

The plaintiff's claim is for money received by the defendant for the use of the plaintiff. For money lent by the plaintiff to the defendant, for wages as in defendant's service.

Particulars:—

1887.—

1st Jan.—To amount of rents of No. 5, Smith St., collected by the defendant ... ... $

1st Feb.—To cash paid to the defendant ... ...
" six months' wages, at $ per month

Amount due ... ... ... ... ... ... ... ... $

(Signed),

No. 3.

Payee against maker of note.

The plaintiff's claim is against the defendant, as maker of a promissory note for $ , dated payable .

Particulars:—

Principal ... ... ... ... ... ... $
Interest ... ... ... ... ... ... ...

Amount due ... ... ... ... ... ... $

(Signed),

No. 4. Appendix C. (Continued.)

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for $ , dated , drawn by A. B, payable after date to the order of E. F., and indorsed to the plaintiff. Indorsee against acceptor.

Particulars:—

| | |
|---|---|
| Principal due ... ... ... ... ... | $ |
| Interest ... ... ... ... ... ... | |
| Amount due ... ... ... ... ... ... | $ |

(Signed),

No. 5.

The plaintiff's claim is against the defendant A. B. as acceptor, and against the defendant C. D. as drawer, of a bill of exchange for $ , dated , payable after date, and indorsed by the defendant C. D. to the plaintiff, of the dishonour of which on presentation the defendant C. D. had notice. Against acceptor and drawer.

Particulars:—

$

(Signed),

No. 6.

The plaintiff's claim is against the defendant as drawer of a bill of exchange for $ , dated , drawn upon A. B., payable to plaintiff after date, which was duly presented for payment and dishonored, but A. B. had no effects of the defendant, nor was there any consideration for the payment of the said bill by the said A. B. Against drawer excusing notice of dishonor.

Particulars:—

$

(Signed),

No. 7.

The plaintiff's claim is for principal and interest due upon the defendant's bond to the plaintiff, dated , conditioned for payment of $ , on the . On bond.

Particulars:—

$

(Signed),

64

Appendix C. (Continued.)

No. 8.

Covenant.

The plaintiff's claim is for principal and interest due under a covenant in a deed dated the 1st January, 1882.

Particulars:—

$

(Signed),

---

No. 9.

Against shareholder for allotment and calls.

The plaintiffs' claim is for money in which the defendant, as a member of the company, is indebted to the plaintiffs for allotment money of . per share on shares in the company allotted to the defendant, as such member, at his request, and for calls of $ each upon shares in the company of which the defendant is a holder, whereby an action has accrued to the plaintiffs.

Particulars:—

$

(Signed),

---

No. 10.

Guarantee.

The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to E. F., under the following guarantee:—

2nd February, 1887.

Sir,—

In consideration of your supplying goods to E. F., I undertake to see you paid.

Yours, &c.,

C. D. (Defendant).

To Mr. A. B. (plaintiff).

Particulars:—

$

(Signed),

---

No. 11.

Against principal and surety.

The plaintiff's claim is against the defendant A. B. as principal and against the defendant C. D. as surety, for the price of goods sold and delivered by the plaintiff to A. B. on the guarantee by C. D., dated the second of February, 1882.

Particulars:—

$

(Signed),

No. 12. Appendix C. (Continued.)

The plaintiff's claim is against the defendants as trustees under , dated , whereby $ invested on was vested in the defendants as trustees upon trust to Debt upon a trust.

Particulars:—

$

(Signed),

## C. 2.

ACTIONS FOR DAMAGES FOR BREACH OF CONTRACT OR DUTY ARISING OUT OF CONTRACT.

No. 1.

The defendant agreed to employ the plaintiff as a servant in the fishery, (or, as the case may be), from to at the wages of For wrongful discharge.

The defendant refused to take him into his service, *(or,* plaintiff entered into defendant's employment and

Defendant wrongfully discharged him from his service on ).

Particulars:—

Wages ... ... ... ... ... ... ... $

Loss of Board and Lodging ... ... ...

$

The Plaintiff claims $

(Signed),

No. 2.

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of to be delivered at on the (or of such a quantity). For non-delivery or delivering inferior goods.

2. The defendant did not deliver any *(or, as the case may be)*, of the said , (or the whole or so much were inferior in quality).

Particulars of damage:—

Loss of profit at per ton on tons... $

The plaintiff claims $1000.

(Signed),

Appendix C. (Continued.)

No. 3.

Charter party.

1. The plaintiff has suffered damage by breach of a charter party dated the between the plaintiff and the defendant of the ship "Mary."

2. The ship was detained at the port of loading.

Particulars of damage:—

| | | |
|---|---|---|
| 1882—Jan. 1 to Jan. 10 | 10 days' detention beyond the demurrage days, at $ per day ... ... | $ |

The plaintiff claims $

(Signed),

No. 4.

Bill of Lading.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff on board the "Jane" signed by defendant, (or by the Master of the ship as agent for defendant), dated the

2. Fifty bales of cotton were delivered in a damaged condition

Particulars of damage:—

Fifty bales at $ ... ... ... ... $

The plaintiff claims $

(Signed),

No. 5.

Policy of Marine Assurance.

The plaintiff was interested to the amount of $ under a marine policy of insurance for that amount, dated the of , 18 , on the ship "Hero," subscribed by the defendant for $ .

Particulars:—

1. Valued or open:—Valued at $
2. Voyage:—At and from
3. (*Or*, Time:—From noon of to noon of ,)
4. Premium to defendant:—$ per cent.
5. Perils insured against causing loss:—Of the seas.
6. Loss:—Total (*or* exceeding 3 per cent.)

The plaintiff claims $

(Signed),

Appendix C. (Continued.)

No. 6.

Railway collision.

The plaintiff has suffered damage from the defendant's negligence in carrying the plaintiff as a passenger by railway from to , causing personal injuries to the plaintiff, in a collision on the .

Particulars of expenses, &c :—

| | |
|---|---|
| Loss of 15 weeks' salary as clerk at £ per week ... ... ... ... ... | £ |
| Dr Smith ... ... ... ... ... ... | |
| Nurse for 6 weeks ... ... ... ... | |
| | £ |

The plaintiff claims £

(Signed),

No. 7.

Against solicitor for negligence.

1. The plaintiff has suffered damage from the defendant's negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer.

2. The negligence was in

Particulars of damage :—

Taxed costs paid to defendant on dismissal of action £ .

The plaintiff claims £

(Signed),

No. 8.

Breach of covenant to repair.

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the , of , for , the defendant covenanted to keep the premises in such repair and condition as therein mentioned.

2. The premises were during the term out of such repair as was required by the covenant.

3. They were yielded up out of such repair at the expiration of the term.

4. Particulars of dilapidations were delivered to the defendant or his solicitor on the of 18 , (*or*, are hereto annexed, *or*, are as follows :)

The plaintiff claims £

(Signed).

Appendix C. (Continued.)

No. 9.

Breach of promise of marriage.

1. The plaintiff has suffered damage by breach of promise by the defendant to marry her on the of , [*or*, within a reasonable time, which elapsed before action,] [*or*, on the death of A. B., which happened before action.]

2. The defendant refused to marry the plaintiff on the of , [*or*, within a reasonable time], [*or*, on the death of A. B.]

Particulars of special damage.

[*As the case may be, if any.*]

The plaintiff claims $

(Signed),

## C. 3.

TORTS, INJUNCTIONS, &c.

No. 1.

Trespass, q. c. f.

The defendant on wrongfully entered the plaintiff's messuage and premises at , and destroyed his fences, dug up his potatoes, cut his grass, and pulled down his timber.

Particulars:—

| | |
|---|---|
| Value of fence destroyed ... ... ... ... ... | $ |
| Value of brls. of potatoes ... ... ... ... | |
| Value of tons of hay ... ... ... ... ... | |
| Value of timber ... ... ... ... ... ... ... | |
| | $ |

The plaintiff claims $

(Signed),

No. 2.

Right of way.

The plaintiff had a right of way, for walking, riding, and driving, and general traffic, from to , over defendant's land.

The defendant, on obstructed and blocked up the way and has ever since continued the obstruction.

(State special damage, if any.)

The plaintiff claims $

(Signed).

No. 3. Appendix C. (Continued.)

The plaintiff, on at assaulted and beat the plaintiff, and did him severe bodily harm. Assault.

Particulars of special damage:—

| | |
|---|---|
| Charges of Mr. Smith, surgeon ... ... ... ... | $ |
| Charges of Mrs. Jones, nurse ... ... ... ... | |
| Loss of business from to ... | |
| | $ |

The plaintiff claims $

(Signed),

---

No. 4.

The defendant, on wrongfully distrained upon the plaintiff's goods in his dwelling house, at Wrongful dismissal.

Particulars:—

| | |
|---|---|
| Value of goods taken ... ... ... ... | $ |
| Injury to business ... ... ... ... | |
| | $ |

The plaintiff claims $

(Signed),

[This form shall be sufficient whether the distress be wrongful, excessive, or irregular.]

---

No. 5.

The defendant, on at maliciously defamed the plaintiff by writing (or printing) and publishing of him, in a certain letter addressed to or in a certain newspaper called the , the matter following: Defamation.

Meaning (*where innuendoes are necessary*) that

or

(Insert particulars of special damage, if any.)

The plaintiff claims $

(Signed),

Appendix C. (Continued.)

No. 6.

Conversion of goods.

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of two casks of oil (or by refusing to give them up on demand, or, destroying them or otherwise depriving the plaintiff of them, as the case may be).

[*If any special damage is claimed add*]—

Particulars [*fill them in*].

The plaintiff claims $

(Signed),

No. 7.

Detinue.

The defendant detained from the plaintiff the plaintiff's goods and chattels, that is to say, a horse, harness, and gig.

The plaintiff claims a return of the said goods and chattels or their value, and $ for their detention.

(Signed),

No. 8.

Negligent driving.

The plaintiff has suffered damage from personal injuries to the plaintiff and damages to his carriage, caused by the defendant (or his servant) on the negligently driving a cart and horse in street.

Particulars of expenses, &c :—

| | |
|---|---|
| Charges of Mr. Smith, surgeon ... ... | $ |
| Charges of Mr. Jones, coachmaker ... | |
| | $ |

The plaintiff claims $

(Signed),

No. 9.

Death from negligence.

The plaintiff, as executor of C. D., deceased, brings this action for the benefit of Eva the wife, and William and Margaret and Dorothea, the children of C. D. [*as the case may be*], who have suffered damage from the defendant's negligence, in carrying the said C. D. by omnibus on , (*or* by negligently managing and conducting the machinery at his foundry, *or as the case may be*,) whereby the said C. D. was killed.

Particulars are delivered herewith.

The plaintiff claims $

(Signed),

No. 10.

Appendix C. (Continued)

Collision of ships.

The plaintiff has suffered damage from injuries to his ship, the "Betsy," and the cargo on board thereof, by a collision with the ship the "Jane," caused by the negligent navigation thereof by the defendant or his servants on , in entering the Narrows of St John's Harbor on

Particulars of loss and expenses:—

1. Charges of Jones & Co, shipwrights, $

2. Loss of use of ship from to $

Particulars of damage to cargo:—

*(Insert them.)*

The plaintiff claims $

(Signed),

---

No. 11.

Patent for infringement.

The defendant has infringed the plaintiff's patent granted for the term of 14 years, from the for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

The plaintiff claims an injunction to restrain the defendant from further infringement and $ damages.

Particulars of breaches are delivered herewith.

(Signed),

---

No. 12.

Trade mark.

1. The defendant has infringed the plaintiff's trade mark.

2. The trade mark is *(describe it)*.

[*If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.*]

3. The following are the acts complained of, viz.:

*(Set them out.)*

The plaintiff claims an injunction to restrain the defendant, his servants, and agents, from infringing the plaintiff's said trade mark, and in particular from [*stating any particular injunction sought*].

The plaintiff also claims an account or damages.

(Signed),

Appendix C. (Continued.)

No. 13.

Seduction.

The plaintiff has suffered damage from the seduction and carnally knowing by the defendant of G. H. the [daughter and] servant of the plaintiff

Particulars of special damage are as follows:—

Loss of service from to the , £
Nursing and medical attendance ... ... ...

£

The plaintiff claims £

(Signed),

No. 14.

Ancient lights

1. The plaintiff is the owner [or, lessee] and occupier of a house situated , in which are the following ancient lights:—

(1.) The kitchen window in the basement on the south side

(2.) The two back dining-room windows on the ground floor on the south side.

(3.) The landing window and back drawing-room window on the south side.

2. The defendant is erecting a building which will, if not stopped, materially diminish the light coming through the said windows.

The plaintiff claims an injunction to restrain the defendant, his contractors, servants, and workmen, from continuing the erection of the building, so as to obstruct or diminish the access of light to the said windows or any of them.

The plaintiff will also, if necessary, claim to have the said building pulled down, or damages for the injury he will sustain if the same is completed and not pulled down.

(Signed),

No. 15.

Nuisances from vapours.

The plaintiff has suffered damage from offensive and pestilential smells and vapours caused by the defendant in the plaintiff's dwelling-house, situate

Appendix C. (Continued.)

The plaintiff claims:—

(1.) $

(2.) An injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind in respect of the same property

(Signed),

---

No. 16

Pollution of water.

1. The plaintiff is the owner (or lessee) and occupier of a farm known as , through which there runs a river known as .

2. The defendant or persons in his employ pollute the water of the said river by passing into the same the refuse of the defendant's dye works, situated higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from sending from the said dye works into the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff *(or as the case may be.)*

The plaintiff will also claim damages in respect of the said nuisance.

(Signed),

---

No. 17.

Fraudulent prospectus.

1. On , the defendant issued a prospectus to the public relating to the A. B Company, Limited.

2. On , the plaintiff received a copy of this prospectus.

3. The plaintiff subscribed for 100 shares in the Company on the faith of this prospectus.

4. The prospectus contained misrepresentations, of which the following are particulars:—

(*a.*) The prospectus stated "....." whereas in fact .....

(*b.*) The prospectus stated "....." whereas in fact .....

Appendix C. (Continued)

(*c.*) The prospectus stated "....." whereas in fact .....

5. The defendant knew of the real facts as to the above particulars.

6. The following facts, which were within the knowledge of the defendants, are material, and were not stated in the prospectus:—

(*a*)

(*b*.)

7. The plaintiff has paid calls to the company to the extent of $

The plaintiff claims:—

1. Repayment of $ and interest

2. Indemnity.

(Signed),

---

No 18.

Fraudulent sale of lease.

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the good-will and lease of the George public-house at , by fraudulently representing to the plaintiff that the takings of the said public-house were $ a week, whereas in fact they were much less, to the defendant's knowledge.

Particulars of special damage:—

(*Fill them in.*)

The plaintiff claims $

(Signed),

---

No. 19.

Malicious prosecution.

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a Justice of the Peace, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted the plaintiff thereon at the Quarter Sessions for , where the plaintiff was acquitted.

Particulars of special damage:—

Messrs L and L.'s bill of cost, $ .

Loss in business from to , $

The plaintiff claims $

(Signed),

No. 20.

Appendix C. (Continued.)

ACTIONS FOR RECOVERY OF LAND, &C.

1 The plaintiff is entitled to the possession of a farm and premises called , [or situate at , or bounded ], which was let by the plaintiff to the defendant for the term of years from the , which term has expired [or as tenant for year to year from the , which said tenancy was duly determined by notice to quit expiring on the ]. Ejectment against tenant.

The plaintiff claims possession and S for mesne profits.

(Signed),

---

No. 21.

1. The plaintiff is entitled as owner to the possession of (*as above*). Against stranger.

2. The defendant wrongfully took and holds possession of the premises.

The plaintiff claims:—

1. Possession of the premises.

2. Mesne profits from the of

(Signed),

---

(C. 4.)

PROBATE.

No. 1.

The plaintiff claims to be executor of the last will, dated the day of , of C. W, late of , gentleman, deceased, who died on the day of , and to have the said will established. This writ is issued against you as one of the next of kin of the said deceased [*or as the case may be*]. Propounding will in solemn form.

A copy of the will is hereto annexed, [*or* has been furnished to you, *or* is herewith served].

(Signed),

---

Appendix C. (Continued.)

No. 2.

For revocation of probate.

The plaintiff claims to be executor of the last will, dated the day of , of C. D., late of , deceased, who died on the day of , and to have the probate of a pretended will of the said deceased, dated the day of revoked. This writ is issued against you as the executor of the said pretended will [*or as the case may be*].

A copy of the will, of which plaintiff is executor, is hereto annexed, (*or*, &c.)

(Signed),

---

No. 3.

For revocation of administration.

The plaintiff claims to be executor of the last will of C. D., late of , deceased, who died on the day of , dated the day of

The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

A copy of the will, of which plaintiff is executor, is hereto annexed, (*or*, &c.)

(Signed),

---

No. 4.

Claim of next of in whose interest disputed.

The plaintiff claims to be the brother and sole next-of-kin of C. D., of , deceased, who died on the day of intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next of kin of the deceased [*or as the case may be*].

(Signed),

---

## C. 5.

In Chancery or Equity.

No. 1.

By creditor to have estate administered.

The plaintiff is a creditor of X. Y., deceased, of whom the defendant C. B. is executor (or administrator).

Appendix C. (Continued.)

Particulars of the claim:—

Principal due on the bond of the testator (*or* intestate) dated the day of , 18 . $

Interest from the of , at 5 per cent

$

The plaintiff claims to be paid the amount due to him, or to have the estate of the said X. Y. administered.

(Signed),

No. 2.

Residuary legatee against executors for default.

1. The plaintiff is residuary legatee of A. B., of , who died , having made his will, dated , and appointed the defendants his executors, who proved his will on .

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows:—

(*Insert particulars shortly.*)

The plaintiff claims:—

(1.) Account of testator's estate on footing of wilful default.

(2.) Administration of the testator's estate.

(Signed),

No. 3.

Partnership.

1. The plaintiff on , entered into partnership articles with the defendant for years.

2. The defendant has broken the partnership articles as follows:—

*a.*

*b.*

*c.*

The plaintiff claims:—

1. Dissolution.

2. Accounts and inquiries.

3. A receiver and manager.

(Signed),

Appendix C. (Continued.)

Against agent for account.

No. 4.

1. The plaintiffs are executors of A, deceased.

2. From the year till his death A, employed the defendant as his confidential agent in the management of a large building estate at X.

3. The defendant as such agent received large sums of money for the said A, for which he refuses to account.

The plaintiffs claim:—

1. Accounts of all sums received and paid by the defendant as agent of A

2. Payment of the amount found due.

(Signed),

---

No. 5.

Foreclosure or sale.

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage:—

*a.* (*Date and name of mortgagor and mortgagee.*)

*b.* (*Sum secured*)

*c.* (*Rate of interest*)

*d.* (*Property subject to mortgage*)

*e.* (*Amount now due.*)

(*If the plaintiff's title is a derivative title, state shortly the assignments under which he claims.*)

(*If the plaintiff is mortgagee in possession add*):

3. The plaintiff took possession of the mortgaged property on the of , and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale or foreclosure (and possession).

(Signed),

---

Redemption

No. 6.

1. The plaintiff is mortgagor of lands, of which the defendant is mortgagee.

2. The following are the particulars of the mortgage:— Appendix C. (Continued.)

(*a*) (*Date.*)

(*b*) (*Sum secured.*)

(*c.*) (*Rate of interest.*)

(*d*) (*Property subject to mortgage.*)

(*If the Plaintiff's title is derivative, state shortly the deeds under which he claims.*)

(*If the defendant is mortgagee in possession add*):

3. The defendant has taken possession (*or* has received the rents) of the mortgaged property.

The plaintiff claims to redeem the said premises, and to have the same reconveyed to him, (and to have possession thereof).

(Signed),

No. 7.

1. By a settlement on the marriage of A. B. and C. B., dated , Whiteacre was demised to trustees for 1,000 years on trust after the deaths of A. B. and C. B. to raise $ for the younger children of the marriage who should attain 21. For raising portions or other charges on land.

2. A. B. died on

3. C. B. died on

4. There were five children only of the marriage of A. B. and C. B., all of whom are now living and have attained 21. The plaintiff is the second born child

5. The defendants were on appointed trustees of the settlement.

The plaintiff claims:—

1. To have $ raised by sale or mortgage and distributed among the persons entitled.

(Signed),

No. 8.

1. On , A. and the defendant B. deposited with the plaintiff $ in Government Debentures of Newfoundland as security for a debt of $ and interest at 5 per cent. due from A. and the defendant B. to the plaintiff. Sale and distribution of proceeds of property subject to any lien or charge.

2. A died on

Appendix C. (Continued.)

3. On administration of the estate of A. was granted to the defendant C.

4. $ for interest is owing to the plaintiff on the security of the said debentures.

The plaintiff claims:—

1. Sale of said debentures.

2. Application of the proceeds in payment of his debt.

3. Distribution of the surplus among the parties entitled.

(Signed),

---

No. 9.

Breach of trust.

1. By a settlement dated on the marriage of the plaintiffs' father and mother, of which the defendant A. B. and one C. D. were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

2. On C. D. died, and the defendant E. F. was appointed in his place.

3. On the plaintiffs' father died.

4. On the plaintiffs' mother died.

5. The defendants have committed the following breaches of trust by:—

(*a.*) Sale of $3,000 in debentures and investment of the proceeds in the business of the defendant A. B.

(*b.*) Sale of leasehold property worth $5,000 to G. H. for $1,000 (without taking any proper steps to ascertain its value or to obtain such value).

The plaintiff's claim:

(1.) The replacement of the debentures and five per cent. interest on the proceeds from the date of sale till replacement.

(2.) Payment of $ and interest at five per cent. per annum from date of the sale.

(Signed),

---

No. 10.

Execution of trust.

1. By a settlement dated , upon trust for A. B. and C. B. successively for life, with remainder for their

children who should attain 21, the following property was assured: — Appendix C. (Continued).

*a.* A sum of $ , Government Debentures of Newfoundland, at per cent.

*b.* $ invested on mortgage of land at X.

*c.* One-fifth of the residuary estate of D., deceased, subject to a prior life interest.

2. On C. B. died,

3. On A. B. died,

4. On D. died,

5. A. B. and C. B. had five children only, of whom the plaintiff is one.

6. The defendants are the present trustees of the settlement.

The plaintiff claims:—

1. Execution of the trusts of the settlement

2. All necessary accounts and inquiries.

3. A receiver.

(Signed),

---

No. 11.

In a marriage was arranged between A. B. and the plaintiff. For rectification, &c., of instruments.

2. By an agreement contained in two letters, dated , it was agreed between C. B., the father of A. B., and D., the father of the plaintiff, that each should settle $ on trust, for A. B. and the plaintiff successively for life, with remainder on the usual trusts for the children of the marriage.

3. By letter dated , from D. to Messrs. E. & Co., his solicitors, he instructed them to prepare a settlement.

4. A settlement, dated , was executed upon the marriage of A. B. and the plaintiff, accidentally omitting to give a life interest to the plaintiff after the life interest of A. B.

5. On A. B. died.

Appendix C. (Continued.)

6. The defendants H. and K. are the present trustees of the settlement.

7. The defendants L., M., and N., are the only children of the marriage.

The plaintiff claims:

Rectification of the settlement.

(Signed),

---

No. 12.

Specific performance.

1. By an agreement (or letters) dated (or made verbally at interviews on or about) the day of , the plaintiff agreed to sell to the defendant the Home Farm, near Topsail, for $ . The sale was to be completed on the of .

*(If the agreement was verbal, add—)*

2. The agreement so entered into has been part performed as follows (*state how*)

The plaintiff claims specific performance of the above agreement and that the defendant may be ordered to execute a proper conveyance of the premises to the plaintiff *(stating in each case what the defendant is required specifically to do)*.

(Signed),

---

No. 13.

Partition or sale of real estate.

1. By will, dated , A. bequeathed Whiteacre to B., C. and D., as tenants in common.

2. On A. died.

3. On A.'s will was proved.

4. On B. conveyed to the plaintiff his share of Whiteacre.

5. On C. conveyed his share to the defendants on trust for sale.

6. By will, dated , D. bequeathed his share among his children equally.

7. On D. died.

8. On D.'s will was proved.

9. There were 10 children of D. living at his decease, some of whom have since died.

(10. Whiteacre consists of a dwelling house and grounds. Appendix C. (Continued.)

11. A sale of the property and a division of the proceeds will be more beneficial than a division of the property.)

The plaintiff claims:—

A division of Whiteacre among the parties interested, (*or*, a sale of Whiteacre and distribution of the proceeds among the parties interested).

(Signed),

No. 14

1. By will, dated , A. devised Whiteacre and S to defendant on trust for plaintiff. Wardship of infants and care of infants' estates

2. On A. died.

3. On probate was granted to the defendant, the sole executor.

4. The plaintiff is an infant 12 years old.

The plaintiff claims:—

1. That the plaintiff may become a ward of Court

2. Administration of the trusts of the will of A. so far as necessary.

(Signed),

# APPENDIX D.

Appendix D.

## FORMS OF DEFENCE

### General Form.

*In the Supreme Court of Newfoundland.*

Between , Plaintiff,
and
, Defendant.

Defence.

The defendant says that:—

1.
2.
3. *(To be filled up in the manner exemplified in the following forms.)*

(Signed),

Appendix D. (Continued.)

Counter-claim

The defendant says that:—

1. } *(To be filled up in the manner exemplified in the*
2. } *following forms.)*

(Signed),

Defence and Counter-claim.

Defence.

The defendant says:—

1. }
2. } *(To be filled up.)*

Counter-claim.

The defendant repeats paragraph 2 of his defence and says that:—

3. }
4. } *(To be filled up.)*

The defendant counter-claims.

(Signed),

## D. 2.

To Actions on Bills of Exchange, &c.

To actions on bills of exchange, promissory notes or checks.

1. The defendant did not accept the bill.

2. The defendant did not make the note.

3. The defendant did not draw the check.

4. The defendant did not indorse to A. B.

5. The defendant (*or* A. B.) did not indorse to the plaintiff.

6. The bill was not presented for payment.

7. The defendant had not due notice of dishonour.

8. The plaintiff was not the holder at the commencement of the action.

9. The bill was accepted (*or*, the note was made) for the accommodation of the defendant without consideration.

10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.

Appendix D. (Continued.)

11. The bill was accepted and delivered to the drawer without consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant, and contrary to the said purpose, indorsed the bill to the plaintiff without consideration (*or*, with notice of the said fraud, *or*, overdue).

12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration (*or*, with notice of the fraud, *or*, overdue).

Particulars of the fraud are as follows:—The drawer on or about the , falsely and fraudulently stated to the defendant that he had shipped 20 tons of pig iron for the defendant on board the "Ajax," which he had not done.

13. The defendant accepted the bill (*or*, made the note) for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the , and the plaintiff failed to deliver the goods.

14. The bill (or, note, or check) was rendered void after issue by a material alteration, viz., by the alteration of the date from to the

(Signed),

## D. 3.

### Defences to Contract Debts.

To actions for any simple contract debts other than bills, notes, or checks.

1. The defendant [except as to ] did not order the goods.

2. The goods [except as to ] were not delivered to the defendant.

3. The price [except as to] was not $.

4. The defendant [or A. B., the defendant's agent] satisfied the claim by payment before action to the plaintiff [or, to C. D., the plaintiff's agent] on the of , 18 .

5. The defendant satisfied the claim by payment after action to the plaintiff on the of .

(Signed),

Appendix D. (Continued.)

## D. 4.

To actions on bonds or contracts under seal for the payment of a liquidated amount in money.

1. The bond [*or*, deed] is not the defendant's bond [*or*, deed].

2. The defendant made payment to the plaintiff on the day according to the condition of the bond.

3. The defendant made payment to the plaintiff after the day named and before action, of the principal and interest mentioned in the bond.

(Signed),

## D. 5.

In actions on guarantees, whether under seal or not where the claim against the principal is in respect of a debt or liquidated demand only.

1. The principal satisfied the claim by payment before action.

2. The defendant was released by the plaintiff giving time to the principal debtor, in pursuance of a binding agreement.

(Signed),

## D. 6.

To any action of debt.

1. As to £ parcel of the money claimed, the defendant has a set-off. Particulars are as follows:—

| | | £ |
|---|---|---|
| 1887, Jan. 25. | To | |
| " Feb. 1. | To | |
| Total ... ... ... .. ... ... | | £ |

2. As to the whole, (*or*, as to £ , parcel of the money claimed,) the defendant made tender before action (*or*, on the day on which it fell due) of £ , and has paid the same into Court.

(Signed),

## D. 7.

### General Defences.

Accord and satisfaction.

1. On was delivered (*or*, paid) by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action; (*or*, on , an agreement between the plaintiff and the defendant whereby it was agreed between the plaintiff and the defendant that was accepted in discharge of the alleged cause of action).

2. The plaintiff was declared insolvent before action, and the cause of action vested in the trustees of his property. Appendix D. (Continued.)

3. The defendant was discharged under a liquidation by arrangement pursuant to the Insolvency Act Insolvency, &c.

4. The defendant compounded with his creditors under , and duly paid to the plaintiff the composition on the day appointed.

5. The defendant was covert at the time of making the alleged contract [or, contracting the alleged debt]. Coverture.

6. The defendant was an infant at the time of making the alleged contract [or, contracting the alleged debt]. Infancy.

7. The defendant as to the whole action [or, as to $ parcel of the money claimed, or, as to the plaintiff's claim on the guarantee of the of , 18 , *or as the case may be*,] has paid into Court $ , and says that sum is enough to satisfy the plaintiff's claim, [or, the plaintiff's claim herein pleaded to]. Payment into Court.

8. The causes of action were released by deed, dated the , between the plaintiff of the first part and the defendant of the second part Release.

9 The contract was rescinded [or, the defendant was exonerated by the plaintiff] before breach. Particulars are as follows:—An arrangement between the plaintiff and the defendant, made verbally on the , [or, by letter from the defendant to the plaintiff, and answer of the plaintiff, dated the ]. Rescission before breach.

10. The debt was barred by the Statute of Limitations [*state which*]. Statute of limitations.

11. The (17th) Section of the Statute of Frauds has not been complied with. Statute of Frauds.

(Signed),

## D. 8.

To Actions for Damages for Breach of Contract or Duty.

1. The defendant did not agree to employ the plaintiff. Denials, &c.

2. The defendant did not refuse to take the plaintiff into his service

3. The defendant did not discharge the plaintiff from his service.

Appendix D. (Continued.)

4. The defendant discharged the plaintiff from his service for good and sufficient reason, viz.:

5. The defendant did not contract (or, promise, or, agree) as alleged.

6. The defendant did not receive the goods for the alleged purpose (or, on the alleged terms).

7. The defendant did not receive the plaintiff as a passenger to be carried as alleged.

8. The defendant did not [*insert breaches denied*].

9. The defendant was not ready and willing to accept and pay for the goods (*or*, to deliver the goods, *or*, *as the case may be*).

Contributory negligence.

10. There was contributory negligence on the part of the plaintiff.

Carriers.

11. The plaintiff did not pay or tender the money for the carriage.

12. The damage or loss occurred from the inherent vice (*or*, bad condition when received) of the goods, (*or*, *as the case may be*).

13. The loss occurred by reason of the excepted perils mentioned in the charter-party (*or*, bill of lading), that is to say, the perils of the seas (*or*, fire, *or as the case may be*).

Charter-parties.

14. The charter-party was cancelled pursuant to cancelling clause therein, the ships not having arrived at port of loading on or before .

15. The alleged liability of the defendant had ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.

Insurance.

16. The loss was not by the perils insured against.

17. The plaintiff was not interested in the subject matter of the insurance.

18. The ship was not seaworthy at commencement of risk (*or*, voyage).

Breach of promise.

19 The plaintiff was not ready and willing to marry the defendant.

(Signed),

## D. 9.

Appendix D. (Continued).

To Actions claiming Injunctions, Damages, or Declarations of Right, founded upon Wrongs.

Denial of the several acts (or matters) complained of. To all actions for wrongs.

(Signed),

---

1. The goods (or, chattels, *or as the case may be*) were not the plaintiff's. To actions for detention or conversion of chattels.

2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows:—

1887, May 3.—To carriage of the goods claimed from to :—

45 tons, at 2s. ... ... ... ... ... ... 8

(Signed),

---

3. The defendant did the acts complained of in necessary self-defence. To action for personal bodily injuries or injuries to chattels.

4. There was contributory negligence on the part of the plaintiff (or, the plaintiff's servant).

(Signed),

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## D. 10.

1. The defendant did not infringe the patent. To actions for infringement of a patent.

2. The invention was not new.

3. The plaintiff was not the first or true inventor.

4. The invention was not useful.

5. [*Denial of any other matter of fact affecting the validity of the patent.*]

6. The patent was not assigned to the plaintiff.

(Signed).

---

## D. 11.

1. The trade mark is not the plaintiff's. Trade Mark.

2. The alleged trade mark is not a trade mark

3 The defendant did not infringe.

(Signed),

Appendix D. (Continued.)

## D. 12.

To trespass. 1. The defendant did not commit the alleged trespasses, nor any of them.

To right of way. 2. The defendant did not obstruct the plaintiff's right of way.

4. The plaintiff had no right of way as alleged.

To assault. 5. The defendant did not assault the plaintiff.

Light. 6. The plaintiff's lights are not ancient [*or deny his other alleged prescriptive rights*].

7. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

Nuisance. 8. The defendant denies that he or his servants pollute the water [or do what is complained of].

[*If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of his claim, i. e., whether by prescription, grant, or what.*]

9. The plaintiff has been guilty of laches, of which the following are particulars:—

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

10. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [*If other grounds are relied on, they must be stated, e. g., the Statute of Limitations as to past damage.*]

(Signed).

## D. 13.

To actions for seduction. 1. The said A. B. was not the servant of the plaintiff.

2. The defendant did not seduce and carnally know the said A. B.

(Signed).

Appendix D. (Continued.)

## D. 14.

To Actions for Recovery of Land.

1. The defendant is in possession of the premises by himself or his tenant.

2. The defendant had no notice to quit.

(Signed),

## D. 15.

Counter-Claims.

1. The defendant lent $ to the plaintiff on which the defendant counter-claims

2. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of

3. The goods not delivered were

Particulars of the damages:—

Difference between market price in , and the contract price at per ton, (or as the case may) ... ... ... ... $

The defendant counter-claims $

(Signed),

## D. 16.

Defences in Equitable Matters.

To action for Administration.

1. The defendants do not admit the plaintiff's claim.

[*or*]

The defendant A. B. admits the plaintiff's claim, but not assets.

[*or*]

The defendant C. D. admits assets, but not the plaintiff's claim.

2. The claim is barred by the Statute of Limitations.

[*State which.*]

3. Payment was made by deceased.

4. The claim is fraudulent in the following particulars:—

[*Set out particulars.*]

Appendix D. (Continued.)

5. The defendant is entitled to a set off of which the following are the particulars:—

[*Set out particulars.*]

6. The claim was released by deed dated the of .

7. Notice was given and assets distributed according to the Statute.

Particulars of the Notice.

Advertisements in the *Times* of January 1, 18 .

Advertisements in the *New York Herald*, February, 18 .

Advertisements in the *Royal Gazette* of Newfoundland of January 25, 18

[*Giving the titles of the newspapers and the dates of those in which the advertisement appeared.*]

8. The personal estate of the testator is sufficient to pay the plaintiff his debt if established.

9. The defendant is not next-of-kin or legatee of the deceased.

(Signed),

## D. 17.

No. 1.

To actions for foreclosure by mortgagee.

1. The defendant did not execute the mortgage.

2. The mortgage was not assigned to the plaintiff (*if more than one assignment is alleged say which is denied.*)

3. The debt is barred by the Statute of Limitations.

4. Payments have been made, viz:—

10 July, 1884, $
18 October, 1885, $

5. The plaintiff took possession on the of , and has received the rents ever since.

6. The plaintiff released the debt by deed, dated

7. The defendant conveyed all his interest to A. B. by deed, dated .

The defendant claims:

1. Account.

2. Re-conveyance.

(Signed).

No. 2.

Appendix D. (Continued.)

1. }
2. }
3. } (*As in preceding form.*
4. }
5. }
6. }

To same by alleged second incumbrancer who claims priority.

7. By a deed, dated , the mortgagor A. B. mortgaged the property in question to the defendant to secure $ and interest at per cent. per annum.

The defendant claims:—

1. A declaration of priority and foreclosure (and a receiver).

(Signed),

[*If the plaintiff claims payment of the mortgage debt, the defendant must, if he disputes his liability, show the grounds on which he does so as in other cases of debt; or he can claim indemnity against the owner of the Equity of Redemption.*]

## D. 18.

To actions for redemption.

1. The plaintiff's right to redeem is barred by the Statute of Limitations.—[*State which.*]

2. The plaintiff assigned all interest in the property to A. B.

3. The defendant by deed, dated the day of , assigned all his interest in the mortgage debt and property comprised in the mortgage to A. B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

(Signed),

[*If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.*]

## D. 19.

To actions for specific performance.

1. The defendant did not enter into the agreement.

2. A. B. was not the agent of the defendant (*if alleged by plaintiff*).

Appendix D. (Continued.)

3. The plaintiff has not performed the following conditions:—(*Conditions*)

4. The defendants did not—[*Alleged acts of part performance*].

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters:—[*State why.*]

6. The Statute of Frauds has not been complied with.

7. The agreement is uncertain in the following respects:—[*State them.*]

8. (*or*) The defendant has been guilty of delay;

9. (*or*) The defendant has been guilty of fraud (*or* misrepresentation);

10. (*or*) The agreement is unfair;

11. (*or*) The agreement was entered into by mistake.

The following are particulars of (8), (9), (10), (11), (*or as the case may be*).

12. The agreement was rescinded under Conditions of Sale, No. 11, (*or*, by mutual agreement).

(Signed),

[*In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e. g., Statute of Limitations, accord and satisfaction, release, fraud, &c.*]

---

## D. 20.

### Forms of Defence in Probate Actions.

No. 1.

Interest suit.

The defendant is nephew and next-of-kin of the deceased, being son of G. B., the brother of the deceased, who died in his lifetime.

The defendant claims:—

That the Court pronounce that the defendant is the nephew and next-of-kin of the deceased, and entitled to a grant of letters of administration of the personal estate and effects of the deceased.

(Signed),

No. 2.

Appendix D. (Continued).

1. The said will and codicil of the deceased were not duly executed according to the provisions of the Statute. Probate of will in solemn form.

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory, and understanding

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff (and others acting with him, whose names are at present unknown to the defendant).

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof, (*or* of the contents of the residuary clause in the said will, *as the case may be*).

6. The deceased made his true last will, dated the , and thereby appointed the defendant sole executor thereof.

The defendant claims:—

1. That the Court will pronounce against the said will and codicil propounded by the plaintiff;

2. That the Court will decree probate of the will of the deceased, dated the , in solemn form of law.

(Signed),

Appendix E.

# APPENDIX E.

## FORMS OF REPLY.

*In the Supreme Court of Newfoundland*

Between , Plaintiff,
and
, Defendant.

Reply.

General Form.

The plaintiff as to the defence says that—

1.

2.

The plaintiff as to the counter-claim says that—

1.

2.

(Signed),

Reply.

Joinder on guarantee.

The plaintiff as to the defence says that—

1. He joins issue.

2. The agreement giving time to the principal expressly reserved remedies against the surety.

The plaintiff as to the counter-claim says that—

Goods.

1. The defendant was not ready and willing to accept and pay for the goods.

(Signed),

### E. 2.

DEFENCE INCLUDING AN OBJECTION IN POINT OF LAW.

No. 1

[*Heading.*]

Defence.

The defendant says that—

To action on a guarantee.

1. The goods were not supplied to E. F. on the guarantee

2. The defendant will object that the guarantee discloses a past consideration on the face of it. Appendix E. (Continued.)

(Signed),

No. 2.

[*Heading.*]

Defence

The defendant says that— Verbal slander.

1. The defendant did not speak or publish the words.

2. The words did not refer to the plaintiff.

3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

(Signed),

No. 3.

[*Heading.*]

Defence

The defendant says that— On marine policies.

1. The defendant did not make the policy.

2. The loss was not by the perils insured against.

3. The defendant will object that the policy was avoided by 19 George II. c. 37, s. 1.

(Signed),

Appendix F.

# APPENDIX F.

## FORMS OF JUDGMENT.

### No. 1.

DEFAULT OF APPEARANCE AND DEFENCE IN CASE OF LIQUIDATED DEMAND.

*In the Supreme Court of Newfoundland.*

Between A. B., Plaintiff,
and
C. D. and E. F., Defendants.

(Date)

Default on liquidated demand.

The defendants (*or* the defendant C. D.) not having appeared to the writ herein (*or* not having delivered any defence), it is this day adjudged that the plaintiff recover against the said defendant $ , and costs, to be taxed.

### No. 2.

INTERLOCUTORY JUDGMENT IN DEFAULT OF APPEARANCE OR DEFENCE WHERE DEMAND UNLIQUIDATED.

[*Heading as in Form 1.*]

The day of , 18

On unliquidated demand

No appearance having been entered to the writ or no defence having been delivered by the defendant herein.

It is this day adjudged that the plaintiff recover against the defendant the value of the goods (*or* damages *or both, as the case may be,*) to be assessed.

### No. 3.

JUDGMENT IN DEFAULT OF APPEARANCE IN ACTION FOR RECOVERY OF LAND.

[*Heading as in Form 1.*]

The day of , 18 .

On recovery of land.

No appearance having been entered to the writ herein, it is this day adjudged that the plaintiff recover possession of the land in the statement with the writ described as .

Appendix F. (Continued.)

No. 4.

JUDGMENT IN DEFAULT OF APPEARANCE AND DEFENCE AFTER ASSESSMENT OF DAMAGES.

[*Heading as in Form 1.*]

(Date.)

Judgment after assessment.

The defendants not having appeared to the writ herein (*or* not having delivered any defence), and the damages which the plaintiff was entitled to recover having been assessed by at $, it is adjudged that the plaintiff recover $ and costs to be taxed.

No. 5.

JUDGMENT AFTER APPEARANCE AND ORDER UNDER ORDER XIV.

Rule 1.

[*Heading as in Form 1.*]

The day of , 18 .

After judgment under Order 14.

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of , dated the day of , 18 , obtained leave to sign judgment under the Rules of the Supreme Court, for [*recite order*].

It is this day adjudged that the plaintiff recover against the defendant $ , (*or* possession of the land in the statement with the writ described as ) and costs to be taxed.

The above costs have been taxed and allowed at $ as appears by a (taxing officer's) certificate dated the day of , 18 .

No. 6.

JUDGMENT AT TRIAL BY JUDGE WITHOUT A JURY.

[*Heading as in Form 1.*]

Judgment at trial without jury

This action coming on for trial [the day of , and] this day, before , in the presence of counsel for the plaintiff and the defendants (*or, if some of the defendants do not appear*, for the plaintiff and the defendant C. D., no one appearing for the defendants E. F. and G. H., although

Appendix F. (Continued.)

they were duly served with notice of trial as by the affidavit of filed the day of , appears,) upon hearing the probate of the will of , the answers of the defendants C. D., E. F., and G. H., to interrogatories, the admission in writing, dated and signed by [Mr. , the solicitor for] the plaintiff A. B., and by [Mr , the solicitor for] the defendant C. D., the affidavit of filed the day of , the affidavit of filed the day of , the evidence of taken on their oral examination at the trial, and an exhibit marked X, being an indenture dated, &c., and made between [parties], and what was alleged by counsel on both sides: This court doth declare, &c.

And this court doth order and adjudge, &c.

---

No. 7

Judgment after Trial with a Jury.

[*Heading as in Form 1.*]

(Date.)

After trial with jury.

The action having on the been tried before the Honourable Mr. Justice with a special jury and the jury having found [*state findings*], and the said Mr. Justice having ordered that judgment be entered for the plaintiff for $ and costs (*or, as the case may be*): Therefore it is adjudged that the plaintiff recover against the defendant $ and $ for his costs (*or* that the plaintiff recover nothing against the defendant and that the defendant recover against the plaintiff $ for his costs of defence, *or, as the case may be*).

---

No. 8.

Judgment after Trial before Referee.

[*Heading as in Form 1.*]

The day of , 18 .

After trial before referee.

The action having on the day of , 18 , been tried before X. Y., Esq., referee, and the said X. Y. having found (*or* reported) that , and the same having been confirmed by the Court before the Honourable Mr. Justice

It is this day adjudged that

Appendix F. (Continued.

No. 9.

JUDGMENT AFTER TRIAL OF QUESTION OF ACCOUNT BY REFEREE.

[*Heading as in Form 1.*]

The day of , 18

On questions of account.

The questions of account in this action having been referred to and he having found that there is due from the to the the sum of $ , and directed that the do pay the costs of the reference

It is this day adjudged that the recover against the said $ and costs to be taxed.

The above costs have been taxed and allowed at $ as appears by a (taxing officer's) certificate, dated the day of , 18

No. 10.

JUDGMENT UPON MOTION FOR JUDGMENT.

[*Heading as in Form 1.*]

(Date.)

Upon motion for judgment.

This day before Mr. X., of counsel for the plaintiff (*or, as the case may be*), moved on behalf of the said , [*state judgment moved for*], and the said Mr X. having been heard of counsel for and Mr. Y. of counsel for the Court adjudged

No. 11

JUDGMENT AFTER TRIAL BY COURT WITHOUT JURY.

[*Heading as in Form 1.*]

Sudgment after trial without jury.

This action having on the day of , 18 , been tried before and the said on the day of , 18 , having ordered that judgment be entered for the for $

It is this day adjudged that the recover from the $ and costs to be taxed.

The above costs have been taxed and allowed at $ as appears by a (taxing officer's) certificate, dated the day of , 18 .

Judgment entered the day of , 18 .

Appendix F. (Continued.)

No. 12.

JUDGMENT IN PURSUANCE OF ORDER.

[*Heading as in Form 1.*]

Judgment on order.

Pursuant to the Order of dated the day of , 18 , whereby it was ordered and default having been made

It is this day adjudged that the plaintiff recover against the said defendant $ and costs to be taxed.

The above costs have been taxed and allowed at $ , as appears by a (taxing officer's) certificate, dated the day of , 18 .

No. 13.

JUDGMENT FOR DEFENDANT'S COSTS ON DISCONTINUANCE.

[*Heading as in Form 1.*]

The day of , 18 .

On discontinuance.

The plaintiff having by a notice in writing, dated the day of , 18 , wholly discontinued this action (or withdrawn his claim in this action for , or withdrawn so much of his claim in this action as relates to , *or as the case may be*).

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at $ , as appears by a (taxing officer's) certificate, dated the day of , 18 .

No. 14.

JUDGMENT FOR PLAINTIFF'S COSTS AFTER CONFESSION OF DEFENCE.

[*Heading as in Form 1.*]

The day of , 18 ,

The defendant in his defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of , 18 , delivered a confession of that defence,

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed. Appendix F. (Continued).

The above costs have been taxed and allowed at $ , as appears by a taxing officer's certificate, dated the day of , 18 .

No. 15.

JUDGMENT FOR COSTS AFTER ACCEPTANCE OF MONEY PAID INTO COURT.

[*Heading as in Form 1.*]

The day of , 18 .

The defendant having paid into Court in this action the sum of $ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice, dated the day of , 18 , accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation; After acceptance of money paid in.

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at $ as appears by a taxing officer's certificate, dated the day of , 18 .

No. 16.

JUDGMENT WHERE NO JUDGMENT ENTERED AT TRIAL BY JURY.

[*Heading as in Form 1.*]

The day of , 18 .

This action having on the day of 18 , been tried before and a jury of the of , and the jury having found and the not having thought fit to order any judgment to be entered, Judgment where none entered at trial by jury.

Now on motion before the Court for judgment on behalf of the , the Court having

It is this day adjudged that the recover against the the sum of $ and costs to be taxed.

The above costs have been taxed and allowed at $ , as appears by a master's certificate, dated the day of , 18 .

Judgment entered the day of , 18

Appendix F. (Continued.)

No. 17.

JUDGMENT ON MOTION AFTER TRIAL OF ISSUE.

[*Heading as in Form 1.*]

The day of , 18 .

After trial of issue upon an order.

The issues or questions of fact arising in this action (*or* cause *or* matter) by the order, dated the day of , ordered to be tried before having on the day of been tried before and the having found Now on motion before the Court for judgment on behalf of , the Court having

It is this day adjudged that the recover against the the sum of $ and costs to be taxed.

---

The above costs have been taxed and allowed at $ , as appears by a master's certificate, dated the day of , 18 .

Judgment entered the day of , 18 .

---

No. 18.

MEMORANDUM ON NOTICE OF JUDGMENT.

Notice of judgment.

Take notice that from the time of the service of this notice you (*or as the case may be*, the infant or person of unsound mind) will be bound by the proceedings in the above cause in the same manner as if you (*or* the said infant or person of unsound mind) had been originally made a party and that you (*or* the said infant or person of unsound mind) may, on entering an appearance at the Clerk's Office, attend the proceedings under the within mentioned judgment (*or* order) and that you (*or* the said infant or person of unsound mind) may within one month after the service of this notice apply to the Court to add to the judgment (*or* order).

# APPENDIX G.

Appendix G

## FORMS OF WRITS OF EXECUTION.

### No. 1.

### Writ of Fieri Facias.

*In the Supreme Court of Newfoundland.*

Between A. B., Plaintiff,
and
C. D., Defendant.

Victoria, by the Grace of God, &c, of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of , greeting:

*Fieri facias* on judgment.

We command you that of the goods and chattels of C. D in your bailiwick you cause to be made the sum of $ , and also interest thereon at the rate of $ per centum per annum from the day of * which said sum of money and interest were lately before us in our Supreme Court in a certain action [*or* certain actions, *as the case may be*], wherein A. B. is plaintiff and C. D. defendant [*or* in a certain matter there depending intituled "In the matter of E. F." *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said Court, bearing date the day of adjudged [*or* ordered, *as the case may be*] to be paid by said C D. to A. B, together with certain costs in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of $ as appears by the certificate of the said taxing officer, dated the day of . And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the said sum of $ [costs] together with interest thereon at the rate of $ per centum per annum from the day of , * and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said A B. in pursuance of the said judgment [*or* order, *as the case may be*]. And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

* Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.

Appendix G. (Continued,)

No. 2.

FIERI FACIAS ON ORDER FOR COSTS

[*Heading as in Form 1.*]

Victoria, by the Grace of God, &c.

To the Sheriff of , greeting:

On order for costs.

We command you, that of the goods and chattels of , in your bailiwick, you cause to be made the sum of $ , for certain costs which by an order of our Supreme Court, dated the day of , 18 , were ordered to be paid by the said to , and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of $ per centum per annum from the day of , 18 , and that you have the said sum and interest before us in our said Court, immediately after the execution hereof, to be rendered to the said And in what manner, &c And have there then this writ.

Witness, &c.,

Levy $ and $ for costs of execution, &c, and also interest on $ at five per centum per annum from the day of , 18 , until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by, &c, of agent for , of Solicitor for the

No. 3.

WRIT OF VENDITIONI EXPONAS.

[*Heading as in Form 1.*]

Victoria, by the Grace of God, &c.

To the Sheriff of , greeting:

*Venditioni exponas.*

Whereas by our writ we lately commanded you that of the goods and chattels of C. D. [*here recite the fieri facias to the end.*] And on the day of , you returned to us in the Supreme Court aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said C. D. to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore, we being desirous that the said A. B, should be satisfied his money

and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said C. D., by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Justice immediately after the execution hereof, to be paid to the said A. B. And have there then this writ. Appendix G. (Continued.)

Witness, &c.

---

No 4.

WRIT OF POSSESSION.

[*Heading as in Form 1.*]

Victoria, by the Grace of God, &c.
To the Sheriff of , greeting:

Whereas lately in our Supreme Court, by a judgment thereof A. B. recovered [*or* E. F. was ordered to deliver to A. B.] possession of all that
with the appurtenances in your bailiwick: Therefore, we command you that you omit not by reason of any liberty of your District, but that you enter the same, and without delay you cause the said A. B to have possession of the said land and premises with the appurtenances. And in what manner, &c. *Habere facias*

And have you there then this writ.

Witness, &c.

---

No. 5.

WRIT OF DELIVERY.

[*Heading as in Form 1.*]

Victoria, by the Grace of God, &c.

To the Sheriff of , greeting:

We command you, that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment or order for the return of which execution has been ordered to issue*], to be returned to A. B, which the said A. B. lately in our Supreme Court recovered against C. D. [*or* C. D. was ordered to deliver to the said A. B] in an action.* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your Writ of delivery.

Appendix G. (Continued.)

bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels. †

And in what manner, &c.

And have you there then this writ.

Witness, &c.

---

No. 6.

*The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on defendant's goods the assessed value of it.*

Assessed value.

[*Proceed as in the preceding form until the *, and then thus:*] And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D. in your bailiwick you cause to be made $ [*the assessed value of the chattels.*] † And in what manner, &c.

And have you there then this writ.

Witness, &c.

[*If in either of the preceding forms it is wished to include damages, costs and interest, proceed to the † and continue thus*]

Damages, costs, and interest.

And we further command you that of the goods and chattels of the said C. D. in your bailiwick, you cause to be made the sum of $ , [*damages*]. And also interest thereon at the rate of 5 per centum per annum, from the day of , which said sum of money and interest were in the said action by the judgment therein [*or* by order] dated the day of , adjudged [*or* ordered] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [*or* order] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of $ , as appears by the certificate of the said taxing officer, dated the day of . And that of the goods and chattels of the said C. D., in your bailiwick, you further cause to be made the said sum of $ , [costs], together with interest thereon at the rate of 5 per centum per annum, from the day of , and that you have that money and interest before us in our said Court immediately after the execution hereof, to be paid to the said A. B. in pursuance of the said judgment [*or* order].

And in what manner, &c.

And have you there this writ.

Witness, &c.

Appendix G. (Continued.)

No. 7.

WRIT OF ATTACHMENT FOR CONTEMPT.

[*Heading as in Form 1.*]

Victoria, by the Grace of God, &c.
To the Sheriff of , greeting:

Contempt. We command you to attach C. D. so as to have him before us in the Supreme Court, wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you.

Witness, &c

---

No. 8.

WRIT OF CAPIAS AD SATISFACIENDUM.

[*Heading as in Form 1*]

Victoria, by the Grace of God, &c.

To the Sheriff of the District of Newfoundland and his Deputies, greeting:

*Capias ad satisfaciendum.* We command that within one calendar month from the date hereof, and not after without further order, you take the above named defendant and him safely keep so that you have his body before us in our Supreme Court immediately after the execution hereof, to satisfy the said plaintiff upon a judgment, which the plaintiff lately in our said Court recovered against the defendant, or until he shall be otherwise discharged by due course of law, and have you then and there this writ.

Witness, &c

(Name of Plaintiff or Plaintiff's Solicitor, and their addresses.)

---

By order of Mr. Justice for the sum of $ .

Appendix H.

# APPENDIX H.

## FORMS OF SUBPŒNA, &c.

### No. 1

### Subpœna ad Testificandum (General Form.)

*In the Supreme Court of Newfoundland.*

Between , Plaintiff,
and
, Defendant.

Victoria, by the Grace of God, &c.

To , greeting:

Subpœna. We command you to attend before at on day the day of , 18 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the plaintiff (*or* defendant).

Witness, &c.

### No. 2.

### Habeas Corpus ad Testificandum.

[*Heading as in Form 1.*]

*Habeas ad testificandum.* Victoria, by the Grace of God, &c.
To the [keeper of our prison at]

We command you that you bring who it is said is detained in our prison under your custody , before at on day the day of at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, &c.

This writ was issued, &c.

Appendix H. (Continued.)

No. 3.

SUBPŒNA DUCES TECUM (GENERAL FORM).

[*Heading as in Form 1.*]

Victoria, by the Grace of God, &c.

To [*the names of three witnesses may be inserted*] greeting:

*Duces tecum.*

We command you to attend before at on day the day of , 18 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

---

No. 4.

CERTIORARI TO INFERIOR COURTS, &c.

[*Heading as in Form 1.*]

Victoria, by the Grace of God, &c.

To the Judge of the Court (Magistrates or Justices of the Peace) holden at , greeting:

*Certiorari.*

We, willing for certain causes to be certified [of a plaint levied in our Court before you against at the suit of ] command you that you send to us forthwith in the Supreme Court of Newfoundland the [said plaint] with all things touching the same, as fully and entirely as the same remain in [our said Court before you,] by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

---

Appendix H. (Continued).

No 5.

PROHIBITION.

[*Heading as in Form 1*

Victoria, by the Grace of God, &c

To the [Judge of the District Court] and to [*name of plaintiff*] of , greeting:

Prohibition.

Whereas we have been given to understand that you the said have entered a plaint against C. D. in the said Court, and that the said Court has no jurisdiction in the said [cause] or to hear and determine the said [plaint] by reason that [*state facts showing want of jurisdiction.*]

We therefore hereby prohibit you from further proceeding in the said [action] in the said Court.

Witness, &c.

---

This writ was issued by, &c.

---

No. 6.

MANDAMUS.

Victoria, by the Grace of God, &c.

To of , greeting:

Mandamus.

Whereas by [*here recite Act of Parliament or Charter if the act required to be done is founded on either one or the other.*] And whereas we have been given to understand and been informed in our Supreme Court of Newfoundland that [*insert necessary inducement and averments.*] And you the said were then and there required by [*insert demand*] but that you the said well knowing the premises, but not regarding your duty in that behalf then and there wholly neglected and refused to [*insert refusal*] nor have you or any of you at any time since in contempt of us and to the great damage and grievance of as we have been informed from their complaint made to us. Whereupon we being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said and every of you firmly enjoining you that you [*insert command*] or that you show us cause to the contrary thereof, lest by your default the same complaint should be repeated to us and how you shall have executed this our writ make

known to us in our said Court forthwith, then returning to us this our said writ, and this you are not to omit. Appendix H. (Continued.)

Witness, &c.

By the Court,

(Signed),

---

No. 7.

COMMISSION TO EXAMINE WITNESSES.

[*Heading as in Form 1.*]

Victoria, by the Grace of God, &c. Commission to examine witnesses,

To
of
and
of
Commissioners named by and on behalf of the
and to
of
and
of
Commissioners named by and on behalf of the
greeting:

Know you that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *viva voce* as hereinafter mentioned witnesses on behalf of the said and respectively at before you or any two of you, so that one commissioner only on each side be present and act at the examination. And we command you as follows:

1. Both the said and the said shall be at liberty to examine on interrogatories and *viva voce* on the subject matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *viva voce*, the party producing any witness for examination being at liberty to re-examine him *viva voce*; and all such additional *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and, with the answers thereto, shall be returned with the said commission

Appendix H. (Continued.)

2. Not less than days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business, and if the commissioners or commissioner of that party neglect to attend pursuant to the notice, then one of you, the commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present and acting to be a true and correct copy or extract shall be annexed to the witnesses deposition.

4. Each witness to be examined under this Commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the Commissioners or Commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this Commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken the depositions.

Appendix H. (Continued.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Chief Clerk and Registrar of the Supreme Court of Newfoundland on or before the day of enclosed in a cover under the seals or seal of the commissioners or commissioner.

8 Before you or any of you, in any manner act in the execution hereof you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences. In the absence of any other commissioner, a commissioner may himself take the oath.

And we give you or any one of you authority to administer such oath to the other or others of you.

Witness, &c

---

This writ was issued by, &c.

---

### Witnesses Oath

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God

---

### Commissioner's Oath

You [*or* I] shall, according to the best of your [*or* my] skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the Commission within written. So help you [*or* me] God.

---

### Interpreter's Oath.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the commissioners named in the Commission

Appendix H. (Continued.)

within written, as far forth as you are directed and employed by the said commissioners, to interpret and translate the same out of the English, into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

---

CLERK'S OATH.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the Commission within written, as far forth as you are directed and employed by the commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

NOTE.—A Commission may issue but an Order will be sufficient for the examination of witnesses within the jurisdiction of the Supreme Court.

---

No. 8.

COMMISSION TO EXAMINE WITNESSES.

18 [*Here put the letter and number*]

*In the Supreme Court of Newfoundland*

Between A. B, Plaintiff,
and
C. D, Defendant.

Victoria, by the Grace of God, &c.

To [*state name and address of examiner or commissioner appointed*], greeting:

Short form of Commission without interrogatories.

Whereas in an action of commenced in our said Court on behalf of against , a commission has been ordered to be issued for the examination of witnesses concerning the truth of the matters at issue in the said cause. We therefore hereby authorize you, upon the day of , 18 , at , (*or* at such time and place as you may appoint) in the presence of the parties or the solicitors in the said action, or in the presence of their or either of their lawfully appointed substitutes, or otherwise notwithstanding the ab-

sence of either of them, to swear the witnesses who shall be produced before you for examination in the said cause, and cause them to be examined, and their depositions to be reduced into writing. We further authorize you to adjourn (if necessary) the said examinations from time to time and from place to place, as you may find expedient. And We command you, upon the examinations being completed, to transmit the depositions and the whole proceedings had and done before you, together with this commission, to the Registry of our said Court. Appendix H. (Continued.)

Witness, &c.

E. F.,
*C. C. and Registrar.*

Commission to examine Witnesses.

Taken out by

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# APPENDIX J.

Appendix J.

No. 1.

SUMMONS (GENERAL FORM).

18

*In the Supreme Court.*

Mr. Justice

Between { Plaintiff, and Defendant.

Let all parties concerned attend before Mr Justice in Chambers on the day of , 18 , at o'clock, , on the hearing of an application on the part of .

Dated the day of , 18 .

*Judge.*

*Solicitor.*

To

Appendix J. (Continued.)

No. 2.

ORDER (GENERAL FORM).

[*Heading*]

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and

I do order [*or* it is ordered] that [*or* do show cause, &c.] and that the costs of this application be

Dated the day of , 18 .

---

No 3.

ORDER UNDER ORDER XIV, No. 1

[*Heading.*]

For final judgment under Order XIV.

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the plaintiff may sign final judgment in this action for the amount claimed with the writ, with interest, if any [*or* possession of the land in the claim with the writ described as ] and costs to be taxed, [*or to the extent and upon the terms allowed by the order*] and that the costs of this application be

Dated the day of , 18 .

---

No. 4.

ORDER TO AMEND.

[*Heading.*]

Upon hearing and upon reading the affidavit of filed the day of , 18 , and

To amend.

It is ordered that the Plaintiff be at liberty to amend the in this action by and that the costs of this application be

Dated the day of , 18 .

Appendix J. (Continued.)

No. 5.

ORDER FOR PARTICULARS (PARTNERSHIP).

[*Heading.*]

For particulars of partnership.

Upon hearing
and upon reading the affidavit of
filed the day of , 18 , and

It is ordered that the furnish the with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firms, pursuant to the rules of the Supreme Court, and that the costs of this application be

Dated the day of , 18 .

---

No. 6.

ORDER FOR PARTICULARS (GENERAL).

[*Heading.*]

For particulars in general.

Upon hearing
and upon reading the affidavit of
filed the day of , 18 , and

It is ordered that the Plaintiff deliver to the defendant an account in writing of the particulars of the Plaintiff's claim in this action and that unless such particulars be delivered within days from the date of this order all further proceedings be stayed until the delivery thereof, and that the costs of this application be

Dated the day of , 18 ,

---

No. 7.

ORDER FOR PARTICULARS (ACCIDENT CASE).

[*Heading.*]

In action for negligence.

Upon hearing
and upon reading the affidavit of
filed the day of , 18 , and

It is ordered that the Plaintiff deliver to the defendant an account in writing of the particulars of the injuries mentioned in the statement of claim, together with the time and place of the accident, and the particular acts of negligence complained of, and that unless such particulars be delivered

Appendix J. (Continued).

within days from the date of this order all further proceedings in this action be stayed until the delivery thereof, and that the costs of this application be

Dated the day of , 18 .

No. 8.

ORDER TO DISCHARGE OR VARY ON APPLICATION BY THIRD PARTY.

[*Heading*]

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and

To vary.

It is ordered that the order of in this action dated the day of , 18 , be discharged [*or* varied by ], and that the costs of this application be

Dated the day of , 18

No. 9.

ORDER TO DISMISS FOR WANT OF PROSECUTION.

[*Heading.*]

Upon hearing
and upon reading the affidavit of filed the day of , 18 , and

To dismiss.

It is ordered that this action be, for want of prosecution, dismissed with costs to be taxed and paid to the Defendant by the Plaintiff, and that the costs of this application be

Dated the day of , 18 .

No 10.

ORDER FOR DELIVERY OF INTERROGATORIES.

[*Heading.*]

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and

For interrogatories.

It is ordered that the be at liberty to deliver to the interrogatories in writing, and that the said do answer the interrogatories as prescribed by and the Rules of the Supreme Court, and that the costs of this application be

Dated the day of , 18 .

Appendix J. (Continued.)

No. 11.

ORDER FOR AFFIDAVIT AS TO DOCUMENTS.

[*Heading.*]

Upon hearing

It is ordered that the do, within days from the date of this order answer on affidavit stating what documents are or have been in possession or power relating to the matters in question in this action, and that the costs of this application be For documents.

Dated the day of , 18 .

---

No 12.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION.

[*Heading.*]

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the do, at all seasonable times, on reasonable notice, produce at [*insert place of inspection*], situate at , the following documents, namely, , and that the be at liberty, to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, at expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be For inspection.

Dated the day of , 18 .

---

No. 13.

ORDER FOR PRODUCTION (UNDERWRITERS).

[*Heading.*]

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the do produce and show to the upon oath all insurance slips, policies, letters of instruction, or other orders for effecting such slips or policies, or relating to the insurance or the subject matter of the insurance on the ship , or the cargo on In Insurance cases.

Appendix J. (Continued.)

board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship , the cargo on board thereof, and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting of the insurance on the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by, or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence, papers, and writings, (whether originals, duplicates, or copies respectively,) which now are in the custody, possession, or power, of the , his brokers, solicitors, or agents, in any way relating or referring to the matters in question in this action, with liberty for the to inspect and take copies of or extracts from the same or any of them, and that in the meantime all further proceedings be stayed, and that the costs of this application be

Dated the day of , 18 .

---

## No. 14.

### Order for Service out of Jurisdiction.

[*Heading.*]

For service out of jurisdiction.

Upon hearing and upon reading the affidavit of filed the day of , 18 , and

It is ordered that the plaintiff be at liberty to issue a writ for service out of the jurisdiction against

And it is further ordered that the time for appearance to the said writ be within days after the service thereof, and that the costs of this application be

Dated the day of , 18 .

Appendix J. (Continued.)

No. 15.

ORDER FOR SUBSTITUTED SERVICE.

[*Heading*]

Upon hearing
and upon reading the affidavit of , filed the
day of , 18 , and

It is ordered that service of a copy of this order, and of a copy of the writ of summons in this action, by sending the same by a pre-paid post letter, addressed to the defendant
at , shall be good and sufficient service of the writ. Substituted service.

Dated the day of , 18 .

---

No. 16.

ORDER FOR RENEWAL OF WRIT.

[*Heading.*]

Upon hearing
and upon reading the affidavit of , filed the
day of , 18 , and

It is ordered that the writ in this action be renewed for six months from the date of its renewal. Renewal of writ.

Dated the day of , 18 .

---

No. 17.

ORDER FOR ISSUE OF NOTICE CLAIMING CONTRIBUTION.

[*Heading.*]

Upon hearing
and upon reading the affidavit of , filed the
day of , 18 , and

It is ordered that the defendant
be at liberty to issue a notice claiming
over against , pursuant to the Rules of the Supreme Court. For contribution

Dated the day of , 18 .

---

Appendix J (Continued.)

No. 18.

ORDER OF REFERENCE.

[*Heading.*]

Upon hearing

and by consent

It is ordered as follows:—

1. [*State matters to be referred*] shall be referred to the award of

2. The arbitrator shall have all the powers of a Judge as to certifying and amending

Reference to arbitration.

3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before the making of the award) on or before the next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.

4. The said parties shall in all things abide by and obey the award so to be made.

5. The costs of the said cause and the costs of the reference and award shall be

6. The arbitrator may (if he thinks fit) examine the said parties to this cause, and their respective witnesses, upon oath or affirmation.

7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.

9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as the Court or Judge may think reasonable and just

10. In the event of either of the said parties disputing the validity of the said award, or moving the Court or Judge to set it aside, the said Court or Judge shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.

11. In the event of the arbitrator declining or failing to act or dying before he has made his award, the said parties may, or if they cannot agree, a Judge may, on application by either side, appoint a new arbitrator. Appendix J. (Continued.)

12 Unless restrained by any order of the Court or a Judge, the party or parties in whose favor the award shall be made shall be at liberty within days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the day of , 18 .

---

No. 19.

ORDER FOR EXAMINATION OF WITNESSES BEFORE ARBITRATOR.

[*Heading.*]

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that attend before the arbitrator herein on the days of , 18 , at and then and there submit to be examined on oath or affirmation on behalf of the touching the matters referred to the said arbitrator: Order for examination of witnesses.

And it is further ordered that the said do at the time and place aforesaid produce and deliver to the said arbitrator the papers, documents, and writings hereafter mentioned, that is to say [*specify documents to be produced.*] Where documents are to be produced.

Dated the day of , 18 .

---

No. 20.

ORDER OF REFERENCE TO MASTER.

[*Heading.*]

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that this action [*or* the matters of account in this action, or the following questions in this action, Master.

Appendix J. (Continued.)

namely, *stating them*] be referred to the Master, to take evidence and report thereon. [If there are any special terms insert them] and that the costs of this application be

Dated the day of , 18 .

---

No. 21.

ORDER FOR EXAMINATION OF WITNESSES BEFORE TRIAL.

[*Heading*]

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and

Examination of witnesses before trial.

It is ordered that , a witness on behalf of the be examined *viva voce* (on oath or affirmation) before the solicitor giving to the solicitor notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the proper office of the Supreme Court, and that a certified copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the as to his belief, and that the costs of this application be

Dated the day of , 18 .

---

No. 22.

ORDER FOR EXAMINATION OF JUDGMENT DEBTOR.

*In the Supreme Court of Newfoundland.*

Between , Judgment Creditor,
and
, Judgment Debtor.

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and

Examination of judgment debtor.

It is ordered that the above-named judgment debtor attend and be orally examined as to whether any and what debts are owing to him, and what other property he has, before at on , and that the said judgment debtor

produce his books [*or as may be ordered*] at the time of the examination, and that the costs of this application be

Appendix J. (Continued.)

Dated the day of , 18 .

---

No. 23.

GARNISHEE ORDER ATTACHING DEBT.

*In the Supreme Court of Newfoundland.*

*In Chambers.*

Between , Plaintiff,
and
, Defendant,
Garnishee.

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , (*or* the return to the writs of Fi. Fa. or Attachment, and

Garnishee order.

It is ordered that the said garnishee attend before at on day the day of , 18 , at o'clock on an application by the said to be examined touching the debt due from him to the said or the property of in his hands.

And that the costs of this application be

Dated the day of , 18 .

---

No. 24.

GARNISHEE ORDER (ABSOLUTE).

*In the Supreme Court of Newfoundland.*

*In Chambers.*

Between , Plaintiff,
and
, Defendant,
Garnishee.

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and
the said garnishee, having been examined on oath under the order dated

Appendix J. (Continued).

It is ordered that the said garnishee do forthwith pay into Court (*or* deliver to the Sheriff) the sum of $ , (*or* property) and that in default thereof execution may issue for the same, and that the costs of this application be

Dated the day of , 18 .

---

No. 25.

INTERPLEADER ORDER, No 1.

*In the Supreme Court of Newfoundland.*

Between , Plaintiff,
and
, Defendant,
and between
, Claimant,
and
Respondent.

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and

Interpleader.

It is ordered that the claimant be barred, that no action be brought against the above-named [sheriff] and that the costs of this application be

Dated the day of , 18 .

---

No. 26.

INTERPLEADER ORDER No. 2.

*In the Supreme Court of Newfoundland.*

Betweeen , Plaintiff,
and
, Defendant,
and
, Claimant.

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and

Claimant substituted.

It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant and that the costs of this application be

Dated the day of , 18 .

Appendix J. (Continued.)

No. 27.

INTERPLEADER ORDER, No. 3.

*In the Supreme Court of Newfoundland.*

Between , Plaintiff,
and
, Defendant,
and between
, Claimant,
and the said execution creditor, and
the Sheriff of Respondents.

Upon hearing
and upon reading the affidavit of , filed the
day of , 18 , and

Order for sale.

It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of *fieri facias* issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof, into Court in this cause, to abide further order herein.

To try issue.

And it is further ordered that the parties proceed to the trial of an issue in the Supreme Court, in which the said claimant shall be the plaintiff and the said execution creditor shall be the defendant, and that the question to be determined shall be whether at the time of the seizure by the Sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at [*or* be disposed of summarily by the Court or a Judge.]

And it is further ordered that the question of costs and all further questions be reserved until the determination of the said issue, and that no action shall be brought against the said Sheriff for the seizure of the said goods.

Dated the day of , 18 .

Appendix J. (Continued.

No. 28.

INTERPLEADER ORDER, No. 4.

[*Heading.*]

Upon hearing, &c

Order for payment or security, or sale.

It is ordered that upon payment of the sum of $ into Court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of the Master [*or as the case may be*] for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named Sheriff of the possession money from this date, the said Sheriff do withdraw from the possession of the goods seized by him under the writ of *fieri facias* herein.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said Sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of , 18 .

---

No. 29.

INTERPLEADER ORDER, No. 5.

[*Heading.*]

Upon hearing, &c.

For payment, security and continuance of Sheriff in possession.

It is ordered that upon payment of the sum of $ into Court by the said claimant, or upon his giving security to the satisfaction of the master [*or as the case may be*] for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named Sheriff withdraw from the possession of the goods seized by him under the writ of *fieri facias* issued herein.

And it is further ordered that in the meantime, and until such payment made or security given, the Sheriff continue in possession of the goods, and the claimant pay

possession money for the time he so continues, unless the claimant desire the goods to be sold by the Sheriff, in which case the Sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein. Appendix J. (Continued.)

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of , 18

---

No. 30.

Interpleader Order, No. 6.

[*Heading.*]

Upon hearing
and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the above-named Sheriff proceed to sell enough of the goods seized under the writ of *fieri facias* issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution. Sheriff to sell sufficient to satisfy claims.

And it is further ordered that out of the proceeds of the said sale, (after deducting the expenses thereof, and rent, if any,) the said Sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said Sheriff, and that the costs of this application be

Dated the day of , 18 .

---

No. 31.

Originating Summons.

[*Heading as in Form 1.*]

Let E. F., the executor of the said A. B., attend before Mr. Justice , in Chambers, on the day of at o'clock, upon the application of C. D.,

Appendix J. (Continued.)

who claims to be a creditor (*or as the case may be*) upon the estate of the above named A. C., for an order for the administration of the estate of the said A. B.

If you do not attend, either in person or by your solicitor, at the time and place above mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

Dated the day of , 18 .

*Judge.*

*Solicitor.*

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Appendix K.

# APPENDIX K.

## FORMS IN EQUITABLE MATTERS.

*In the Supreme Court of Newfoundland.*

In the matter of the estate of A. B., late of the , deceased.

*Or,*

Between C. D., Petitioner,
and
E. F., Defendant.

No. 1.

FORMS OF ADVERTISEMENT FOR CLAIMANTS NOT BEING CREDITORS.

Advertisement for next-of-kin, &c.

Pursuant to a judgment [*or* order] of the Supreme Court of Newfoundland [*or* of the Hon. Mr. Justice , of the Supreme Court of Newfoundland] made in [the matter of the estate of and in] an action by against the person claiming to be the next-of-kin to [*or, as the case may be,*] , late of who died in or about the month of , are by their solicitors, on or before the day of to come in and prove their claims before the said Supreme Court of Newfoundland, or a Judge thereof, or in default

thereof they will be peremptorily excluded from the benefit of the said judgment [*or* order]. Appendix K. (Continued.)

The day of , at o'clock in the noon, at , is appointed for hearing and adjudicating upon the claims.

Dated the day of , 18 .

A. B.,
*C. C. and R.*

---

No. 2.

FORM OF ADVERTISEMENT FOR CREDITORS.

Pursuant to a judgment [or an order] of the Supreme Court of Newfoundland [or of, &c.] made in the matter of the estate of A. B., and in an action S. against P., the creditors of A. B., late of , in , who died in or about the month of , 18 , are on or before the day of , 18 , to send by post, prepaid, to E. F., of , the solicitor of the defendant, C. D., the executor [*or* administrator] of the deceased [*or as may be directed*], their Christian and surname, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them, or in default thereof, they will be peremptorily excluded from the benefit of the said judgment [*or* order]. Every creditor holding any security is to produce the same before the Supreme Court in St. John's, Newfoundland, or a Judge thereof, on the day of , 18 , at o'clock in the noon, being the time appointed for adjudication on the claims. For creditors.

Dated this day of , 18 .

G. H.,
*C. C. and R.*

---

No. 3.

NOTICE TO CREDITOR TO PRODUCE DOCUMENTS.

(*Short Title*)

You are hereby required to produce in support of the claim sent in by you against the estate of A. B., deceased, [*describe the document required to be produced*], before the For proof by documents.

Appendix K. (Continued.)

Supreme Court or a Judge thereof at the Court House in St. John's, Newfoundland, on the day of , 18 , at o'clock in the noon.

Dated this day of , 18 .

G. R., of &c., solicitor for plaintiff [or defendant, *or as the case may be.*]

To Mr. S. T.

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No. 4.

RECEIVER'S RECOGNIZANCE

Receiver's recognizance.

, of , of , and , of ,

Before our Sovereign Lady the Queen in her Supreme Court of Newfoundland personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe to the Chief Clerk of the Supreme Court of Newfoundland, the sum of , to be paid to him, his executors or administrators, and unless they do pay the same, they, the said do grant, and each of them doth grant for himself, his executors and administrators, that the said sum of shall be levied, recovered, and received, of and from them and each of them, and of and from all and singular the messuages, lands, tenements, and hereditaments, goods and chattels, of them and each of them wheresoever the same shall or may be found. Witness our said Sovereign Lady Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, in the Supreme Court of Newfoundland, the day , 18 .

This Recognizance is approved of and allowed. , *Judge.*

*v.*

Whereas, by an order of the Supreme Court of Newfoundland [*or* by order of the Hon. Mr Justice ] made in a cause wherein are plaintiffs and defendants, and dated the day of

It was ordered that a proper person should be appointed to receive [*or* that upon the above bounden first giving security he should be appointed receiver of] the rents and profits of the real estate, and to collect and get in the outstanding personal estate of in the said

order named. And whereas the Judge hath [*approved of the said as a proper person to be such receiver, and hath*] approved of the above bounden and as sureties for the said and hath also approved of the above written recognizance with the under-written condition as a proper security to be entered into by the said and pursuant to the said order and the general orders of the said Court in that behalf, and in testimony of such approbation the Judge hath signed an allowance in the margin hereof

Appendix K. (Continued.)

Now the condition of the above-written recognizance is such that if the said do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said , at such periods as the Court or a Judge shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or a Judge hath directed or shall hereafter direct, then the above recognizance shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.

Taken and acknowledged by the above-named, &c.

---

No. 5.

FORM OF ORDERING ACCOUNTS AND INQUIRIES.

This Court doth order that the following accounts and inquiry be taken and made; that is to say,—

Form of ordering accounts and inquiries.

1. An account of the estate not specifically bequeathed of *A. B.*, deceased, the testator in the pleadings named, come to the hands of, &c.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the testator's legacies and annuities (if any), given by the testator's will.

5. An inquiry what parts (if any) of the testator's said estate are outstanding or undisposed of.

6. An inquiry what incumbrances (if any) affect the testator's estate, or any and what parts thereof.

And it is ordered that the testator's estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

Appendix K. (Continued).

*(If Sale ordered.)*

7. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

8. An inquiry, what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's estate be sold with the approbation of a Judge, &c., &c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

---

# APPENDIX L.

## COSTS.

### Writs, &c.

Costs.

| | |
|---|---|
| Writ for the commencement of any action ... | $ 1.00 |
| Concurrent writ ... ... ... | 75 |
| Renewal of a writ ... ... ... | 50 |
| Notice of a writ for service in lieu of writ out of jurisdiction ... ... ... | 75 |
| Writ of mandamus ... ... ... | $2.00 to 3 00 |
| Writ of subpœna *ad testificandum* ... ... | 75 |
| Writ of subpœna *ad testificandum*, with *duces tecum* ... ... ... ... | 1.00 |
| Writ of distringas ... ... ... | 1.00 |
| Writ of execution, or other writ to enforce any judgment or order ... ... ... | 1 00 |
| Any writ not included in the above ... | 1.00 |
| Necessary copies, each, one-half of above ... | |
| Attendances to issue or seal, or deliver to the Sheriff, are included in foregoing fees ... | |
| Affidavit of service ... ... ... | 25 |
| Service upon every defendant ... ... | 25 |
| And for every mile necessarily travelled to effect service ... ... ... | 20 |
| For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit. | |

| | |
|---|---|
| Service, if authorized to be served by post ... | $ 75 |
| Where any writ, order and notice, or any two of them, have to be served together in the same manner, one fee only for service is to be allowed. | |

### Appearances.

| | |
|---|---|
| Entering any appearance to a writ... ... | $ 75 |
| If entered at one time for more than one person, for every defendant beyond the first ... ... ... ... | 10 |
| If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above ... ... ... | 75 |
| Notice of appearance (where required) ... | 25 |

### Instructions.

| | |
|---|---|
| To sue or defend in common actions for debt . | $1.00 |
| In other actions ... ... ... | $1.00 to 3.00 |
| For statement of claim or special case, or petition, or originating summons, injunction, or mandamus ... ... ... | 1.50 to 2.50 |
| For defence or further defence, or counter-claim, or reply, confession of defence, rejoinder or joinder of issue ... ... | 1 00 to 3.00 |
| For interrogatories for examination of a party or witnesses ... ... ... | 1.00 to 2.50 |
| For affidavit in answer to interrogatories, and other special affidavits ... ... | 50 to 1.00 |
| These allowances include perusals. | |
| Instructions in other cases are included in the fee allowed for the act | |
| Conferences and consultations, and perusals, unless expressly allowed, are included in the fee allowed for the act. | |

### Drawing Pleadings and other Documents.

| | |
|---|---|
| Statement of claim, defence or counter-claim | $1.00 to 5.00 |
| Reply, with or without joinder of issue, confession of claim, or of defence, joinder of issue without other matter, and any other pleading (not being a petition) and amendments of any pleading ... ... | 1 00 to 1.50 |

Appendix L. (Continued.)

Costs.

| | |
|---|---|
| Particulars, breaches, and objections, when required ... ... ... ... | $ 75 to 1.50 |
| Commission to examine witnesses ... ... | 2.50 to 5.00 |
| Instructions to Commissioner ... ... | 1.50 |
| Necessary interrogatories, each ... ... | 30 |
| Ordinary orders of Court or Judge ... | 75 to 1 50 |
| Summons, originating or other ... ... | 50 to 1.00 |
| Judgment or order in the nature of such ... | 1.00 to 3.00 |
| Special case and petitions, and issues settled | 1 50 to 10.00 |
| Necessary copies of all the foregoing to serve, not to exceed one-half allowed for drawing. | |
| Brief, (including attendances on counsel), on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, special case and petition, before a Court or Judge, commissioner, referee, examiner, or officer of the Court, when necessary and proper in addition to pleadings, when such briefs are required for the Court or Judge, &c., or when the importance of the cause justifies the employment of counsel not being a solicitor for the party ... ... ... | 2.50 to 10.00 |
| Necessary copies of brief ... ... | 1 00 to 2.50 |
| Affidavits ... ... ... ... | 50 to 2 50 |
| Accounts, statements, papers and other documents, and their copies for the Court or Judge, when required, not exceeding per folio ... ... ... ... | 08 |
| Advertisements, when required ... ... | 75 to 1.50 |
| Bills of costs for taxation, where amount at issue exceeds two hundred dollars ... | 50 to 1.00 |
| Copy to serve ... ... ... ... | 25 to 50 |
| Necessary notices and appointments, and their copies, each ... ... ... | 25 to 75 |
| For settling and drawing conveyance and other instruments ordered, and examining titles, inclusive of interviews with counsel, solicitors and parties, according to difficulty and importance. | |

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ATTENDANCES.

| | |
|---|---|
| To obtain consent of next friend to sue in his name, or of a guardian, or of a trustee, receiver, &c. ... ... ... | $ 75 |
| To file and deliver any pleading, or petition, or a special case ... ... ... | 25 |

| | | |
|---|---|---|
| To inspect, or produce for inspection, documents pursuant to a notice to admit ... | $ 75 | |
| To settle a commission to examine witnesses | 1.50 | Costs. |
| To examine and sign admissions, to inspect, or produce for inspection, documents referred to in any pleading, notice in lieu of pleading, or affidavit to obtain or give any necessary or proper consent, or undertaking to obtain an appointment to examine witnesses ... ... ... | 75 to 1.50 | |
| On examination of and examining witnesses before any examiner, commissioner, officer, or other person, each witness ... ... | 1.50 to 5.00 | |
| In Court or at Judges' Chambers on ordinary summons, or to hear judgment, including motion or hearing of application ... | 1.00 to 2.50 | |
| To enter or set down hearing or trial, when necessary ... ... ... ... | 1.50 | |
| On taxation of a bill of costs (every necessary attendance) ... ... ... | 1.50 | |
| On arbitrator, referee, master, or other officer, for purposes other than examination of witnesses, according to circumstances ... | 1.00 to 2.50 | |
| On Sheriff to draw and strike juries, each act | 1.50 | |
| Attendances occasioned by neglect are not to be taxed against the opposite party, but may be taxed in his favor in reduction of the bill against him. | | |

## Counsel Fees

| | |
|---|---|
| Brief fee on hearing or trial in common indebitatus or liquidated money claims in matters in which the amount *bona fide* sought to be recovered does not exceed $100 ... ... ... ... | $2.50 |
| $100 and under $200 ... ... ... | 5.00 |
| $200 and under $400 ... ... ... | 10.00 |
| $400 and upwards ... ... ... | 15.00 |
| Or such further fee not exceeding in all $25, as the Master may consider reasonable, having regard to the amount sought to be recovered and the difficulty and length of the case. | |
| In special actions on contracts, in torts, interpleader, equitable claims of a special kind, probate suits, special cases and other matters, such brief fee from ... ... | 5.00 to 50.00 |

Appendix L. (Continued.)

Costs.

as the circumstances may warrant.

| | |
|---|---|
| Fee for an argument incidental to an action | $2 50 to 25.00 |
| For a motion ... ... ... ... | 1.50 to 5.00 |

Fees for second counsel may be taxed where the circumstances may warrant it.

All the fees in the foregoing scales are subject to reduction, or increase by the Court or Judge, or by the allowance in estate matters of a lump sum in lieu of all or any costs.

Fees for third counsel can only be allowed after special leave of the Court or Judge.

---

PRINTING.

| | |
|---|---|
| Where, pursuant to order, any matter is printed, the solicitor of the party printing shall be allowed for copy for the printer (except when made by the officer of the Court), at per folio ... ... | $ 08 |
| And for examining the proof print, at per folio | 01 |

And for printing—the amount actually and properly paid to the printer.

And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.

These allowances are to include all attendances on the printer.

The solicitor for a party furnishing or entitled to take printed copies shall be allowed the amount he shall pay therefor.

A folio for the purposes of these rules shall consist of 100 words. Every figure counting as one word.

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EXPENSES.

There shall be allowed just and reasonable expenses incurred in going a distance to procure evidence or affidavits, in obtaining surveys, plans, or estimates for use at a trial, skilled witnesses, experts, and inspection,

### Small Contract Claims.

In claims for debt or for liquidated damages, and in claims founded on contracts of any kind in which the amount actually involved does not exceed $50, the taxing officer shall allow a party in lieu of all fees of solicitor and counsel only $5, subject under special circumstances to a further allowance by the Court or Judge.

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### Separate Pleadings, &c.

A solicitor employed by two or more parties shall not be allowed for separate pleadings or other proceedings, unless the taxing officer is of opinion they were properly incurred.

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### Costs as between Solicitor and Client.

When costs or any of them are ordered to be paid as between solicitor and client, they shall be taxed as for all costs and expenses necessarily or properly incurred, as directed by these rules in the case of solicitor and counsel and client.

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### Clerks and Commissioners and Examiners.

| | |
|---|---|
| Issuing every process or commission ... | $ 50 |
| Entering final judgment ... ... ... | 50 |
| Signing order of Court ... ... ... | 25 |
| Swearing to affidavit, for every deponent ... | 25 |
| Certificate ... ... ... ... | 1.00 |
| Drawing an affidavit ... ... ... | 1 00 |
| Preparing a writ with claim, outside St John's | 1.00 |
| Examining a witness ... ... ... | 1.50 to 4.00 |
| Every necessary appointment for examination | 25 |

[The Court or Judge may allow a larger fee for examinations.]

---

### Masters and Taxing Officers.

| | |
|---|---|
| Appointments or summonses, each ... | $ 25 |
| Taxing in ordinary issues ... ... | 50 |
| For taxations requiring more attendances than one, in matters of equity and probate and cases of unusual difficulty, for every additional attendance, not exceeding two ... | 1 00 |

Appendix L. (Continued.) Costs.

| | |
|---|---|
| Every attendance upon an ordinary reference | $ 1.50 |
| Report thereon ... ... ... | 1 50 |
| Every attendance upon special reference, the first ... ... ... ... | 5 00 |
| If more than one day, every day after the first | 2.50 |
| Report thereon ... ... ... | 2.50 |
| Every summons ... ... ... | 25 |
| Certificate of facts ... ... ... | 75 |
| Allowing and signing advertisement ... | 75 |
| Settling the terms of a conveyance or other instrument ordered by the Court Judge | 1.50 to 2 50 |
| Poundage on sales where ordered, one per cent. on the residue of purchase money, to be in full of all charges except advertisements. | |

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SHERIFFS AND PROCESS SERVERS.

| | |
|---|---|
| Service of copy of process ... ... | $ 50 |
| Every arrest ... ... ... ... | 2.50 |
| Every return ... ... ... ... | 50 |
| Bail bond ... ... ... ... | 1.00 |
| Necessary travelling to serve or execute process, per mile ... ... ... | 25 |
| Executing writ of possession or delivery ... | 2.50 |
| Every writ of attachment ... ... | 25 |
| Executing writ of partition ... ... | 5.00 |
| Drawing, summoning, and returning special juries ... ... ... ... | 2.00 |
| Service of copy of writ of subpœna ... | 25 |
| For every jury sworn ... ... ... | 1.00 |
| Poundage on attachment and levies where movables, as sold, three per cent. on the first $500, and two per cent. on all above that amount, exclusive of necessary disbursements for removal, safe custody, &c. | |
| Where not sold all necessary disbursements for removal, safe custody, &c. | |
| Poundage on sales of landed property, one per cent | |

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SHERIFF, &C., IN REPLEVIN.

| | |
|---|---|
| Warrant to replevy ... ... ... | $ 50 |
| Replevin bond ... ... ... | 1.00 |
| Mileage, going and returning ... ... | 12 |

JURORS.

| | |
|---|---|
| On writ of partition, each ... ... | $2.00 |
| Special jurors, each ... ... ... | 1.50 |
| Petty jurors, each ... ... ... | 1 00 |

Costs.

WITNESSES

| | |
|---|---|
| Ordinary witnesses, per diem ... ... | $ 75 |
| Professional men ... ... ... | 2.50 |
| Architects, surveyors and other skilled witnesses ... ... ... ... | 1.50 |

and reasonable expenses incurred and authenticated.

# CHAPTER 51.

## Of the Court of Labrador.


SECTION
1.—Institution of Court at Labrador; Powers of Court.
2.—Proceedings to be summary.
3.—Salaries of Judge and other officers.
4.—Appeal allowed in certain cases.
5.—Proceedings in case of appeal.
6.—The Judge to be ex-officio Justice of the Peace and Coroner.
7.—Offenders and arrested debtors to be confined as directed by the Judge.
8.—Law of attachment made applicable.
Schedule.


**1.** The Court of civil and criminal jurisdiction at Labrador shall be a Court of record called the Court of Labrador, and shall be presided over by one Judge, appointed or to be appointed by the Governor in Council; and shall, over all such parts of Labrador as lie within the Government of Newfoundland, have jurisdiction, power and authority, to hear and finally determine all criminal prosecutions for assaults and batteries, and for larcenies without force to the person, committed within the limits aforesaid, and all actions and suits of a civil nature, wherein the debt, damage or thing demanded, shall not exceed in amount or value five hundred dollars.

**2.** The proceedings of the said Court shall be summary; a record of such proceedings shall be kept and signed by the Judge thereof; and the forms of process and other proceedings in civil cases shall be as set out in the schedule to this chapter annexed, and in criminal matters shall be those used in summary proceedings of a like character by Justices of the Peace in this island.

**3.** The salary of the Judge of such Court shall not exceed eleven hundred and fifty-four dollars; and there shall be such officers of the said Court as the Governor in Council shall appoint; and the salaries of such officers shall be fixed by the Legislature.

**4.** Any person against whom any judgment or order of the said Court may be given in any matter over two hundred dollars, or where the matter in dispute shall relate to the title of any lands or fishery, or where the right in future may be bound, may within two days after such judgment or order appeal therefrom to the Supreme Court, giving one day's notice to the opposite party of such intended appeal; and upon such appellant, within seven days, giving security to the satisfaction of the Judge, for the speedy prosecution of such appeal for the performance of the judgment or order of the Supreme Court, or for the performance of the judgment of the Court of Labrador, should the same be affirmed or the appeal dismissed, and in such last mentioned cases also for the payment

of the costs of such appeal, execution shall be stayed upon the judgment of the Court below: Provided that such Judge may, upon reasonable grounds, extend the time for such appeal, and when he shall think it necessary, reserve any question of law arising in any case before him for the consideration of the Supreme Court, suspending his judgment in the meanwhile until such question shall have been determined.

**5.** When an appeal shall be allowed in manner aforesaid, a copy of all proceedings in the Court below, authenticated under the hand and seal of the Judge thereof and of any other officer, if any such, who may be appointed for that purpose, shall be transmitted by such Judge to the Registrar of the Supreme Court at St. John's; and after adjudication the Supreme Court shall carry such adjudication into effect by its own process, or direct that the same be carried into effect by the Court below.

**6.** The Judge of the said Court shall be, *ex officio*, a Justice of the Peace for the island of Newfoundland and its dependencies, with the like power and authority as any Stipendiary Magistrate or Justice of the Peace lawfully appointed in Newfoundland.

**7.** Criminal offenders sentenced by the said Court to imprisonment, and debtors arrested under final process may be confined in any place of security within the limits aforesaid the said Judge may direct, or may be conveyed to any goal in Newfoundland, there to remain until removed or discharged in due course of law.

**8.** The provisions of the law of attachment in this Colony, as defined by the practice and mode of procedure in the Supreme Court, shall apply to and be used in the said Court of Labrador, so far as may be applicable: Provided that an attachment may issue for any amount exceeding ten dollars.

## SCHEDULE.

### SUMMONS.

To Bailiff:

Summon C. D. to appear before me on at to answer A. B. who complains that the said C. D. owes him as particulars hereto annexed, and to be further dealt with according to law.

Given under my hand at , this day of A. D.

G. H.,
*Judge of the Court of Labrador.*

ATTACHMENT.

To Bailiff:

Attach C. D., by his lands, chattels, goods, debts and effects, to appear before me on at to answer A. B, who complains that the said C. D owes to him , as by particulars hereunto annexed, and to be further dealt with according to law.

Given under my hand at , this day of A. D.

G. H.,
*Judge of the Court of Labrador.*

Oath for $

---

EXECUTION AGAINST GOODS.

To Bailiff:

Levy on the property of C. D. the sum of , which by judgment of this Court was declared to be due and to be paid by him to A. B, for debt (or damages for an assault, &c, as the case may be), and pay the said sum to the said A. B., in discharge of such judgment.

Given under my hand at , this day of A. D.

G. H.,
*Judge of the Court of Labrador.*

---

EXECUTION AGAINST THE PERSON.

To Bailiff:

Arrest C. D, and detain him in custody until he shall pay A. B. the sum of , amount of a judgment obtained against him by the said A. B. for debt (or damage for an assault, as the case may be), or until he be delivered by due course of law

Given under my hand at , this day of A. D.

G. H,
*Judge of the Court of Labrador.*

---

WARRANT OF ATTACHMENT

To [*Name of Garnishee*]:

You are commanded to pay or deliver into this Court all money, property and effects of C D., to the value of now in your possession or under your control, to answer a claim of A. B. for debt (or damage for an assault, as the case may be).

Given under my hand at , this day of A. D.

G. H.,
*Judge of the Court of Labrador.*

SUMMONS IN CASES OF TRESPASS, TROVER, EJECTMENT, OR CASE.

To Bailiff:

Summon C. D. to appear before me on at to answer A. B, who complains that the said C. D., on assaulted the said A. B., (or took and detained from him his property, or wrongfully holds possession of certain lands, situate at the property of the said A. B, or on removed the nets of the said A. B., as the case may be), and to be further dealt with according to law.

Given under my hand at , this day of A. D.

G. H.,
*Judge of the Court of Labrador.*

---

FORM OF WRIT OF POSSESSION.

To Bailiff:

Put A. B in possession of that parcel of land (describing it) which by a judgment of this Court made on the said A. B. recovered from C. D., who now wrongfully holds possession of the same.

Given under my hand at , this day of A, D.

G. H.,
*Judge of the Court of Labrador.*

---

FEES TO BE TAKEN BY THE BAILIFF OF THE COURT.

Serving every summons, fifty cents, and ten cents per mile going and returning

Serving every copy of attachment, fifty cents, and ten cents per mile going and returning.

Serving every warrant of attachment, fifty cents, and ten cents per mile going and returning.

Every arrest, two dollars and fifty cents, and mileage at the rate aforesaid.

Poundage on writs of execution and on actual seizures under attachment, two-and-a-half per cent.

# CHAPTER 52.

## Of the Central and Harbor Grace District Courts.


SECTION
1.—Central District Court.
2.—Harbor Grace District Court.
3.—Jurisdiction of District Courts.
4.—Sittings of District Courts.
5.—Constitution of District Courts.
6.—Judges of Central District Court may sit apart.
7.—Judges to be *ex officio* Magistrates and Justices of the Peace.
8.—Causes of action not to be divided.
9.—Witness refusing to attend, warrant to issue.
SECTION
10.—*Fieri facias*, and warrant in hands of third parties.
11.—Removal of causes into Supreme Court.
12.—Appeals to Supreme Court.
13.—Salaries of Judges.
14.—Judges not to engage in other business.
15.—Clerks to be Clerks of the Peace.
16.—Jurisdictions in actions to recover chattels.
17.—Counter-claims and Equitable defences.
18.—Judges to make rules.
19.—Judges to take evidence fully.
20.—Judges to take down questions raised at trial, and rulings.


**1**. There shall be a Court of Record for the Central District to be called the Central District Court, to be held in St. John's whenever business may require, and in such other places within the Central District at such times and for such periods of time in each place as may from time to time be prescribed by proclamation of His Excellency the Governor, which proclamation shall for the purposes aforesaid have the force and effect of law as if enacted in this chapter.

**2**. There shall be a Court of Record held in Harbor Grace, to be styled the District Court of Harbor Grace, with jurisdiction over the following electoral districts, viz : Harbor Grace, Carbonear, Port-de-Grave and Bay-de-Verde, and also that part of the electoral district of Trinity, lying on the South side of Trinity Bay, between Scilly Cove and Bay Bull's Arm inclusive. The said District Court of Harbor Grace shall be held at such places within the limits above (other than Harbor Grace) at such times and for such periods of time at each place as may from time to time be prescribed by proclamation of His Excellency the Governor, which proclamation shall for the purposes of this chapter have the force and effect of law as if enacted in this chapter.

**3**. The said Courts shall have power to hear and determine summarily all civil causes over which the Courts of Sessions now have jurisdiction, together with all civil causes whatever to the amount of fifty dollars, except where the title to lands may be involved, and except actions for libel or slander, replevin, malicious prosecutions and actions against any Justice of the Peace, or other public officer for acts done in the execution of his duty, if such Justice or officer object thereto: Provided that the jurisdiction of the Harbor Grace District Court, beyond the electoral district of Harbor Grace, shall be exercised only in cases in which the Court of Sessions of the other districts have not at present a jurisdiction.

**4.** The said District Courts may respectively sit without proclamation or formal adjournment at the Court House, or in such other buildings as may be used for that purpose.

**5.** There shall be two Judges of the Central District Court who shall be Barristers of five years standing, and there shall be one Judge of the Harbor Grace District Court.

**6.** The Judges of the Central District Court may sit together or apart as business may require.

**7.** The Judges of the said District Courts shall be *ex officio*, Stipendiary Magistrates, Police Magistrates, and Justices of the Peace for the island of Newfoundland and its dependencies, and as such may have and exercise inside and outside the limits of the Central District and Harbor Grace District Courts, the same jurisdiction, powers and authority as are had and exercised by Stipendiary Magistrates within the Central District and the limits of the Harbor Grace District Court.

**8.** A plaintiff shall not divide any cause of action for the purpose of bringing two or more suits in the said District Courts respectively, but he may abandon the excess and recover to any amount, not exceeding fifty dollars.

**9.** If any person duly summoned to appear in either of the said Courts, to give evidence in a cause pending therein, neglect or refuse to appear, and no just cause shall be shown for such neglect or refusal, and proof be made of legal service of a summons, and that conduct money was tendered to him for his expenses, and also proof that such person is a material and necessary witness in the hearing of the cause, a Judge of the said Court may issue a warrant to bring such person before the said Court, at a time to be mentioned therein, to testify as aforesaid, and should such witness refuse to be sworn and give evidence the said Judge may commit him for contempt to the common jail or penitentiary, within the said Judge's district, unless in the meantime the said witness shall consent to be examined and give evidence.

**10.** The said District Courts shall have power to order a *fieri facias*, or warrant of execution, to be issued after judgment given, and also to attach, under final process, money, goods, debts and effects in the hands of any third party, and to summon and compel, by warrant, the attendance of any party residing or being within the jurisdiction of the said Court for examination, and to make and enforce the observance of such order thereon as to the said Court shall appear just: Provided, that no such attachment shall affect executory contracts or debts not actually due.

**11.** No plaint lawfully entered in the said District Courts shall be removed or removable therefrom into the Supreme Court by any writ or

process, unless the cause of action shall exceed twenty dollars or such amount be involved therein, and then only by leave of a Judge of the Supreme Court in St. John's, or on circuit, in cases which shall appear to him fit, and on such terms as to payment of costs or otherwise as such Judge shall order; and such removal shall be had upon rules or orders *nisi* and absolute in the first instance, without any writ of *certiorari*.

**12** If any person shall feel aggrieved by any order or judgment of either of the said District Courts, to any amount exceeding twenty dollars or involving such amounts, he shall have liberty to appeal from the Central District Court to the then next sitting of Her Majesty's Supreme Court in St. John's and from the District Court of Harbor Grace to the then next sitting of the Supreme Court on circuit at Harbor Grace or Brigus: Provided, the same be entered within two days after such order or judgment shall have been made or given, and if required by the Judge of the District Court, recognizance or other security with or without surety, shall be entered into to pay the said claim and all costs.

**13** The Judges of the Central District Court appointed under this chapter shall receive annually as salaries two thousand two hundred dollars each, and the Judge of the Harbor Grace District Court shall receive annually as salary the sum of two thousand and fifty dollars.

**14.** The said District Judges shall not practice in any profession or business or hold any other office of profit or emolument under the Crown, or take any fee or payment for any official act.

**15.** The Clerk of the Peace for the Central District shall be Clerk of the Central District Court, and the Clerk of the Peace at Harbor Grace shall be Clerk of the Harbor Grace District Court.

**16.** The said District Courts shall have power to entertain, hear and determine actions for the wrongful detention of goods and chattels, in which the specific return of the said chattels are sought, and where the value thereof does not exceed two hundred dollars; and in the event of a judgment for the plaintiff, and in case the defendant shall appeal against the said judgment, the said District Courts may order the defendant to deliver the said goods and chattels to the plaintiff upon such terms and conditions as to security or otherwise, as the said Courts shall consider just and reasonable: Provided, that in case of appeal by the defendant, he shall be entitled, if the Supreme Court shall so order, to have the question of his right to the said goods and chattels tried by a jury, as if the action had originally commenced in the Supreme Court. This section shall not apply to actions for the recovery of goods and chattels taken under a distress for rent.

**17.** The District Courts may entertain defences by way of counter-claim or of equitable defence; but where any such defence or counter-claim

of the defendant involves matter or amount beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always, that in such case it shall be lawful for the Supreme Court, or any Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such District Court to the Supreme Court, or Judge thereof; and in such case the record in such proceeding shall be transmitted by the District Court to the Supreme Court; and the same shall thenceforth be continued and prosecuted in the Supreme Court as if it had been originally commenced therein.

**18.** The said Judges of the District Courts shall make rules for—

(1) Regulating the sittings of the said District Courts;

(2) Regulating the pleading, practice and procedure in the said District Courts;

(3) Regulating the granting of appeals in all matters over which the Supreme Court has appellate jurisdiction;

(4) And generally for regulating any matter relating to practice and procedure of the said District Courts, or to the duties of the officers thereof, or to the costs of proceedings therein, and every other matter deemed expedient for the better attaining the ends of justice, advancing the remedies of suitors and carrying into effect this chapter.

Such rules, before they shall come into operation, shall first obtain the sanction and approval of the Judges, or a majority of the Judges, of the Supreme Court, and shall be published in the *Royal Gazette* for at least one month.

**19.** Upon the trial of any cause, it shall be the duty of the Judge to take the evidence of the witnesses fully in writing, together with his rulings on the admission or rejection of evidence.

**20.** The Solicitor on either side, upon the said Judge ruling against him on a question of evidence, may reduce said question to writing and hand the same to the Judge who shall transcribe the same on his minutes or attach the same thereto, and the said Judge shall thereupon enter upon his minutes his rulings thereon.

# CHAPTER 53.

## Of the Courts of Session, Stipendiary Magistrates and Justices of the Peace.


SECTION

1.—Places of holding and jurisdiction
2.—Times of sittings.
3.—Jurisdiction—Summary trial.
4.—One Stipendiary Magistrate may hold civil sessions.
5.—Magistrate out of session like jurisdiction.
6.—Such Magistrate to have similar jurisdiction in summary complaints.
7.—Magistrate may commit accused person for trial in any district.
8.—Attachment of moneys, goods, &c., after judgment.
9.—Jurisdiction of Justices in criminal matters.
10.-11.—Review of decisions of Justices.
12.—Investigation of cause of fires.

SECTION

13.—Magistrates to act as Coroners.
14.—Fees in such cases.
15.—Justices of Peace may act where no Stipendiary Magistrate.
16.—Where no Clerk of Peace, Magistrate may act.
17.—Conviction, &c., not to be quashed for want of form only.
18.—Table of fees.
19.—Table of fees to be posted up.
20.—Penalty for taking fees other than those allowed.
21.—Fees to be accounted for quarterly.
22.—Jurisdiction of Magistrates West and North Coasts.
23.—Appeal.
24.—Judges of Supreme Court to make Rules.


**1**. Courts of General and Quarter Sessions shall be holden in this island and its dependencies at such places with jurisdiction over such extent of district as hath been heretofore appointed, or as may be hereafter appointed by the proclamation of the Governor.

**2**. The Courts of General and Quarter Sessions shall be holden on the first Monday of January, April, July and October, and shall sit by adjournment from time to time until the business pending therein respectively shall be disposed of, and there shall be no necessity for any proclamation thereof.

**3**. The said Courts may hear and determine in a summary way all civil actions for the recovery of debt or damages to the amount of twenty-five dollars, save actions in which the title to any land or tenement may be in question; and except actions for libel or slander, replevin, malicious prosecution, and actions against any Justice of the Peace or other public officer for acts done in the execution of his duty; and may hear and determine all disputes to any amount concerning the wages of servants in the fishery, the supply of bait, and the hiring of boats for the fishery, and the wages or share of seals of any person engaged in the seal fishery; provided that this section shall not apply to any claim or dispute in reference to damages for the alleged wrongful dismissal of any such persons engaged in the seal fishery where the damages claimed shall exceed forty dollars.

**4**. The Court of Sessions for the transaction of civil business may be held by one Stipendiary Magistrate.

5. Stipendiary Magistrates out of session may exercise the like jurisdiction in civil cases as the Courts of General and Quarter Sessions, with the like powers and authorities.

6. Any such Stipendiary Magistrate shall also have and exercise the like power, authority and jurisdiction, in the hearing and determining of summary proceedings on complaints, and the carrying out of any conviction thereon, as any two or more of Her Majesty's Justices of the Peace now or hereafter may exercise under any law that may be in force in this colony; and shall have the same power and authority to require and compel the attendance of witnesses.

7. Persons charged with offences before a Magistrate or Justice in one district may be committed for trial in the Supreme Court in any other district, or may, although committed in or to one district, be indicted and tried in another as justice and convenience may require, and a person may be charged in one place or district and the investigation continued and commitment, if any, made in another place or district; and for such purposes Magistrates and Justices shall exercise all necessary powers of removal and examination of witnesses, and for the purpose of this section, shall be regarded as Magistrates for this colony and its dependencies, and for all places and districts within this colony and its dependencies.

8 Any of the said Courts of Sessions, or Stipendiary Magistrates, before whom judgment shall be recovered, may attach moneys, goods, debts and effects, in the hands of any third party, and summon and compel by warrant, if necessary, the attendance of any party for examination, and make and enforce the observance of such order thereon as to the said Courts or Magistrates shall appear just: Provided that no such attachment shall affect executory contracts or debts not actually due.

9. Justices of the Peace shall have and exercise, in proceedings of a criminal or other nature, the like powers, authorities and jurisdiction, where the same shall not be inapplicable, as Justices of the Peace in England may now or hereafter by law exercise there, except as may be otherwise provided by local enactment.

10 Whenever the decision of any Justice or Justices is called in question in any superior court of common law, by a rule to show cause or other process issued upon an *ex parte* application, it shall be lawful for any such Justices to make and file in such court an affidavit, setting forth the grounds of the decision so brought under review, and any facts which he may consider to have a material bearing upon the question at issue, without being required to pay any fee in respect of such affidavit, and such affidavit may be sworn before a Commissioner authorized to take oaths, and may be forwarded, by post, to the Clerk of the Court for the purpose of being filed.

**11**. Whenever any such affidavit has been filed, the Court shall, before making the rule absolute against the Justice or Justices, or otherwise determining the matter so as to over-rule or set aside the acts or decisions of the Justice or Justices to which the application relates, take into consideration the matters set forth in such affidavit, notwithstanding that no counsel appear on behalf of the said Justices.

**12**. Whenever any building or property shall be injured or destroyed by fire, the Stipendiary Magistrate or Justice for the district in which such fire shall occur, or such Justice as the Governor in Council may appoint therefor, shall make an investigation to ascertain the cause or origin of the fire; and such Magistrate or Justice may enforce the attendance of such persons to give evidence before him, as he may require, by summons or warrant, and examine them under oath; and the proceedings and all depositions connected therewith shall be returned to the Attorney General for such further proceedings as may be prescribed by law.

**13**. In all cases of persons slain, drowned, suddenly dead, *felo de se* or dead in prison, or in cases where the medical attendant on any deceased person shall refuse to certify that such deceased person died from natural causes an enquiry respecting the death of such person shall be held by a Stipendiary Magistrate and for that purpose in addition to all other powers possessed by him as such Stipendiary Magistrate shall have and exercise all the powers excepting the power of summoning juries which now are or may hereafter be vested in a coroner under the law of England and the proceedings in such enquiry and all depositions connected therewith shall be transmitted to the Attorney or Solicitor General for such further proceedings as may be required by law.

**14**. The following fees shall be allowed and paid on such enquiries:—

| | |
|---|---|
| Fee for one medical witness ... ... ... ... | $5.00 |
| Every necessary post mortem examination ... ... ... | 5.00 |
| Every necessary witness (each day's attendance) ... ... | 75 |

**15**. In all places where there shall be no resident Stipendiary Magistrate or when he shall be absent, any Justice of the Peace in or near the locality shall and may perform and exercise all the functions, powers and authorities which are or might be exercised or performed by a Stipendiary Magistrate under the provisions of these Consolidated Statutes.

**16**. A Stipendiary Magistrate or Justice of the Peace in any district or place where there shall be no Clerk of the Peace, or in his absence, may perform the duties of such officer.

**17**. No conviction or other proceeding by any Stipendiary Magistrate or Justice of the Peace shall be quashed or set aside for want of form only.

**18**. The following fees and costs shall be chargeable and taken in the several Police Offices, and in the several Courts of Session in this Colony:

FEES PAYABLE TO THE CLERK OF THE PEACE IN CIVIL OR SUMMARY CRIMINAL CASES.

| | | |
|---|---|---|
| Summons or subpœna ... ... ... ... ... | $ | 25 |
| Hearing of every cause ... ... ... ... ... | | 25 |
| Entering proceedings to judgment ... ... ... ... | | 25 |
| Warrant in execution ... ... ... ... ... | | 25 |
| Recognizance ... ... ... ... ... ... ... | | 25 |
| Every oath ... ... ... ... ... ... | | 25 |

FEES TO CLERKS OF THE PEACE IN CASES OF FELONY OR MISDEMEANOR, BEFORE A JUSTICE OF THE PEACE.

| | | |
|---|---|---|
| Deposition or examination ... ... ... ... | $ | 50 |
| Summons ... ... ... ... ... ... ... | | 25 |
| Subpœna ... ... ... ... ... ... ... | | 25 |
| Warrant ... ... ... ... ... ... ... | | 30 |
| Commitment ... ... ... ... .. ... | | 30 |
| Recognizance of prosecuting witness or other person ... ... | | 30 |

FEES PAYABLE TO CONSTABLE OR BAILIFF

| | | |
|---|---|---|
| For service of summons or subpœna ... ... ... | $ | 25 |
| Executing every warrant to arrest the person ... ... | | 50 |
| If the service or execution of the process shall require the officer to travel beyond the distance of two miles, he shall be allowed for every mile travelled by him for such purpose beyond that distance, the sum of ... ... ... ... ... | | 10 |
| For execution of any warrant, order, or final process of or from a Justice ... ... ... ... ... ... | | 25 |
| When the levy under warrant, order, or final process shall exceed five dollars, then there shall be allowed to such officer on such levy, in addition to the above fee of twenty-five cents, five per cent. | | |

WITNESSES' FEES.

| | | |
|---|---|---|
| For each day's attendance of a witness ... ... ... | $ | 75 |
| All travelling, to be computed from the residence of the witness to the place of trial and then back again, per mile ... ... | | 10 |

FEES OF JAILER OR KEEPER OF LOCK-UP HOUSE.

| | | |
|---|---|---|
| For every person committed to gaol ... ... ... | $ | 50 |
| For every person discharged therefrom except insolvents ... | | 50 |

## BASTARDY CASES.

### FEES TO BE RECEIVED BY THE CLERK.

| | |
|---|---|
| For the examination of the party complaining ... ... | $ 25 |
| Warrant to apprehend mother, or reputed parent ... ... | 50 |
| Bond to appear, to maintain or perform order of filiation ... | 1.25 |
| Order of filiation ... ... ... ... ... | 50 |
| Every commitment ... ... ... ... ... | 40 |
| Oath ... ... ... ... ... ... ... | 25 |

**19.** A printed table of the foregoing fees and costs shall be posted up in a conspicuous place in every Police Office and Court of Sessions in this Colony for public inspection

**20.** Any person taking greater fees or costs in any Police Office or Court of Session than the fees or costs hereinbefore mentioned, shall for each offence forfeit and pay to Her Majesty the sum of fifty dollars.

**21.** From and after the passing of this chapter all fees paid into the office of the several Clerks of the Peace shall be accounted for quarterly by them, and be certified by the Court of Sessions, or a presiding Justice thereof; and the total amount of such fees shall be paid into the hands of the Receiver General for the use of the colony, and a detailed annual statement of such fees shall be laid before the Legislature.

**22.** Stipendiary Magistrates, on that part of the coast of Newfoundland extending from Cape Ray *via* Cape Norman to Cape John, shall have all the jurisdiction, powers and authority conferred upon the Judges of the Central District Court, as provided by Chapter 52 of these Statutes. And in all actions *ex contractu*, the said Magistrates shall have jurisdiction to the amount of two hundred dollars

**23.** If any person shall feel himself aggrieved by any order or judgment of such Stipendiary Magistrate in a civil cause to any amount exceeding forty dollars, he shall have liberty to appeal to the Supreme Court in St John's, or on circuit, and if required by the Magistrate recognizance or other security, with or without surety, shall be entered into to pay the said claim and all costs.

**24.** The Judges of the Supreme Court may prescribe rules for regulating the practice and procedure of the said Magistrates' Courts, and all appeals therefrom. And such rules when made, shall have the force and effect of law, as if specially enacted in this chapter.

# CHAPTER 54.

## Of the Law Society, Barristers and Solicitors.


SECTION

1.—Law Society as now constituted to continue.
2.—Treasurer and Benchers to be a Body corporate.
3.—Judges to be visitors.
4.—*Ex officio* Benchers.
5.—Benchers other than *ex officio* to be seven in number.
6.—Time of election; Qualification of electors and Benchers.
7.—Each elector may vote for seven Benchers.
8.—Mode of conducting election; Notices; Manner of voting; Vote by proxy.
9.—Seven having highest votes shall be Benchers for three years.
10.—Persons entitled to vote may be present at counting.
11.—Votes to be counted by scrutineers.
12.—In case of equality of votes another vote to be taken; Proceedings thereon.
13.—Disqualification of elector in certain cases.
14.—Secretary to make out list of persons entitled to vote; to receive complaints concerning same; proceedings thereon; to add to list persons called to the Bar in term previous to election. Revised list shall stand as register of electors. Persons not on list shall not be entitled to vote.
15.—No person eligible as Bencher unless five years called, and qualified to vote.
16.—Retiring Benchers eligible for re-election.
17.—Votes cast for *ex officio* Benchers null and void.
18.—Proceedings in case votes cast be more or less than seven.
19.—Result of election declared by Secretary, and published in *Royal Gazette*
20.—Benchers may make regulations, &c.
21.—Voting papers shall not be destroyed till term after election.
22.—Only voting papers given by Secretary to be used.
23.—Proceedings in case of vacancy in office of Secretary.
24.—Persons elected Benchers take office immediately.
25.—Absence from Convocation of Bencher for two consecutive terms causes vacancy.
26.—Election of Treasurer and Secretary.
27.—Power of Benchers to fill vacancies.
28.—Benchers may make rules for government of Society.
29.—Powers of Benchers in enquiries before them; to administer oath; to summon with force of subpœna; attachment for disobedience.
30.—Benchers may appoint necessary officers and servants.
31.—Benchers may make rules for the improvement of legal education; appointment of readers and lecturers; imposition of fees; attendance of students; examinations for establishment of scholarships, &c.
32.—Benchers shall have power to call to the Bar as heretofore.
33.—Benchers may make rules, &c., for admission of Students, Barristers, &c.
34.—Benchers may make rules for examination of Solicitors' certificates, appointment of examiners, &c.
35.—Benchers may suspend decision as to granting certificates.
36.—Benchers may disbar a Barrister, or disqualify Solicitor or Student for unprofessional or improper conduct; Proceedings thereon.
37.—Notice of disbarment to be given to Supreme Court.
38.—Non-payment of fees shall disqualify Barrister; Benchers to make rules herein.
39.—Disqualification of a Solicitor to be communicated to Supreme Court; Proceedings thereon.
40.—Proceedings in case of disbarring a Barrister; Appeal to Supreme Court; If no notice given of appeal, resolution of Convocation confirmed; When charge preferred, Barrister shall surrender certificate as Barrister and Solicitor; Bencher not to sit upon charge against himself.
41.—Benchers may make rules, &c., as to library; may appropriate moneys for maintenance.
42.—Benchers may appoint reporters.
43.—Benchers shall make rules, &c., for publication of reports.
44.—Shall determine remuneration of reporters.
45.—Annual meeting in January. Benchers shall report; may make rules for conduct of business, &c.
46.—Ten members of Bar may request special general meeting.
47.—Fees to go to general funds of the Society.
48.—Benchers to have power to raise by loan $2,000. Sinking fund for repayment.
49.—Persons qualified as Barristers.
50.—No person except duly qualified shall act as Solicitor.
51.—Rights of Attorneys and Solicitors heretofore practising preserved; Solicitors shall be officers of the Supreme Court. No admission under age of twenty-one.
52.—Persons qualified for admission as Solicitors.
53.—Enactments as to service of Clerks under articles; Articles to be filed; Time of service to date from filing; Solicitor to have no more than three Clerks; In case of insolvency, &c., of Solicitor,

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Supreme Court may order discharge or assignment of Clerk; Provision in case of discharge of contract by death or otherwise of Solicitor.
54.—Qualifications and conditions for Solicitor's admission; Service and actual employment under articles; Examination and swearing in; Deposit of articles with Secretary, and certificate of service, &c., with affidavits; Candidates must take oath of allegiance and office.
55.—Enactments as to examinations of articled Clerks and Solicitors; Preliminary, intermediate and final examinations; No Bencher to take part in examination of his own or partner's Students.
56.—Proceedings for admission of Barristers and Solicitors of other Courts.
57.—Benchers to make rules for admission of Solicitors; as to articles, certificates, capacity, examiners, &c.
58.—Benchers may give certificate of fitness and qualification of Candidate to be admitted as Solicitor.
59.—Candidate shall produce certificate, &c., before a Judge of the Supreme Court; Proceedings thereon.
60.—Fees to be paid to Chief Clerk for Law Society.
61.—Chief Clerk and Registrar to deliver, annually, to Secretary names of Solicitors admitted since last return.
62.—Secretary to enter such copies in a book with numbers.
63.—Secretary shall put up in Law Library alphabetical list of all Solicitors who have

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taken out certificates for year, &c.; Practising Solicitors must obtain certificates, &c.; Fees for certificates as Society may determine.
64.—No certificate to be issued to Solicitor indebted to Society for fees or fines.
65.—When certificates not taken out before first Monday in January additional fees required.
66.—Solicitor practising in Supreme Court without certificate liable to penalty of $200.
67.—Solicitor practising in Supreme or other Courts without certificate liable to suspension and penalty.
68.—Solicitor being a prisoner shall not practise during confinement; Penalty.
69.—Solicitor acting as agent of person not qualified may be struck off the roll, and unqualified person imprisoned for one year.
70.—Supreme Court may fine, suspend or strike off roll a Solicitor for default of moneys received by him as Solicitor.
71.—Unqualified person commencing or prosecuting suit not to recover fees; Contempt of Court.
72.—Solicitors holding certain offices prevented from practising; Penalty.
73.—No Solicitor shall practise while engaged in trade.
74.—After twelve month's admission Solicitor not to be struck off the roll for defect in articles, registry, service, admission or enrolment.
75.—When Solicitor struck off Chief Clerk to certify to Secretary.

## PART I.

### OF THE LAW SOCIETY.

**1.** The Law Society of Newfoundland shall continue as at present constituted, subject to the provisions of this chapter, and to the bye-laws, resolutions, rules and regulations of the said Society in force on the first day of June, A. D. 1889, except so far as the same are inconsistent with this chapter, until altered by the Benchers of said Society, pursuant to this chapter.

**2.** The Treasurer and Benchers of the said Society, heretofore incorporated, and their successors, shall continue to be a body corporate and politic by the name of "The Law Society of Newfoundland," and may purchase, take, possess, and after acquiring the same, sell, lease, or depart with any lands and chattels, real or personal, for the purposes of the said Society, but for no other purpose, and may execute all matters pertaining to them to do.

**3.** The Judges of the Supreme Court of Newfoundland shall be visitors of the Society as heretofore.

#### BENCHERS.

**4.** The Attorney General, Solicitor General, the Chief Clerk and Registrar of the Supreme Court, (being a Barrister), and all members of

the Bar of Newfoundland, who have at any time held the office of Attorney General of Newfoundland, and any retired Judge of the Supreme Court shall respectively, *ex officio*, be Benchers of the Society.

**5.** The Benchers of the Law Society, exclusive of *ex officio* members, shall be seven in number, to be elected as hereinafter provided.

**6.** The election of Benchers shall be held on the second Monday in January of every third year from the year 1889.

**7.** Each member of the Bar not hereinafter declared ineligible as an elector, may vote for seven persons.

**8.** The election shall be conducted as follows, subject to such rules and regulations as may be made by virtue of section 20.

(1.) Due notice having been given to all members of the Bar to attend at the place in St. John's appointed for holding the election, the Secretary shall deliver to each elector present, eligible to vote, a voting paper, which shall contain a list of—

(*a.*) The names of the *ex officio* Benchers.

(*b.*) The names of the Benchers then holding office, not being *ex officio* Benchers.

(*c.*) The names of all members of the Bar qualified for election or re-election.

(2.) The elector then shall vote for, by striking out seven names on the list (*c*), of those qualified for election or re-election, and folding up the voting paper, place it in the ballot-box in the presence of the Secretary.

(3.) Any elector qualified to vote, and not being present, may vote by proxy, by authorizing some qualified elector to mark his voting paper, which the Secretary shall deliver to the said proxy upon due written authority so to do, and the same rules shall apply to proxies as to members present.

**9.** The seven persons who have the highest number of votes shall be Benchers of the Law Society for the next term of three years and shall hold office until the election of their successors, as provided for in section six.

**10.** Any person entitled to vote at such election shall be entitled to be present at the counting of the voting papers.

**11.** The voting papers shall be counted by three scrutineers, of whom one shall be the Secretary, and two shall be appointed by the meeting.

**12.** In case of an equality of votes between two or more persons, which leaves the election of one or more Benchers undecided, another vote shall be taken in the same manner as hereinbefore provided, the voting being limited to those only who have attained an equality of votes upon the first ballot, and the member or members obtaining the largest number of votes upon such new ballot shall be declared elected.

**13.** No person shall be entitled to vote at an election if he has ceased to practice his profession or unless all his fees to the Law Society have been paid.

**14.** (1). The Secretary of the Law Society shall, in the term previous to the time for any election, make out an alphabetical list or register of the members of the Bar who are entitled to vote at the succeeding election, and such register shall be posted up in the Law Library or other place in the Court House in Saint John's, for at least fourteen days before such election.

(2.) In case any member of the Society complains to the Secretary, in writing, of the improper omission or insertion of any name in the list, it shall be the duty of the Secretary forthwith to examine into the complaint and rectify the error, if any there be; and in case any person is dissatisfied with the decision of the Secretary, he may appeal to the Benchers, and their decision shall be final, and such list shall remain or be altered in accordance with their decision.

(3.) The Secretary shall add to the list the names of all persons who have been called to the Bar during the term previous to the election, and no alteration shall be made to the list, except as is provided in this section; and the list as it stands revised upon the Monday preceding the election shall be the register of persons entitled to vote at the next election.

(4.) No person whose name is not inserted in the said list shall be entitled to vote at the election.

**15.** No person shall be eligible as a Bencher at any election who shall not have completed five years at the Bar or who is not qualified to vote at the election.

**16.** At all elections retiring Benchers shall be eligible for re-election.

**17.** Any votes cast for any person who is ineligible to be a Bencher, or who is a Bencher *ex officio*, shall be null and void, and the election shall be declared as if such votes had not been cast.

**18.** In the event of an elector marking more than seven names on his voting paper, the first seven only shall be counted. In the event of there

being less than seven names marked on the paper, it shall be declared null and void.

**19.** Upon the completion of the scrutiny of the votes the Secretary shall forthwith declare the result of the election and shall cause the names to be published in the issue of the *Royal Gazette*, next ensuing after such election.

**20.** The Benchers of the Society may make such regulations as they consider expedient, not contrary to the provisions of this chapter, for regulating the procedure under the preceding fourteen sections of this chapter.

**21.** The voting and other papers belonging to any election shall not be destroyed until after the close of the term next succeeding the election, but the same shall, together with all other papers in connection with the said election, be retained by the Secretary.

**22.** No elector shall use any other voting paper than that given him by the Secretary, and the voting on any other paper than that supplied by the Secretary shall be void. An elector who spoils a voting paper may obtain another from the Secretary.

**23.** In the event of there being no Secretary for the time being of the Law Society at the time at which any election under this chapter is to be held, or in the event of the Secretary being unable from illness or other unavoidable cause to act at the election, then and in such case the Treasurer for the time being of the Law Society shall appoint, under his hand, some other person to act as Secretary, and the person so appointed shall perform all the duties of the Secretary as prescribed by this chapter.

**24.** The persons so elected Benchers aforesaid shall take office immediately after they shall be elected, and shall hold office until the election of their successors.

**25.** The seat of an elected Bencher who has failed to attend the meeting of the Benchers for two consecutive terms, shall, at the expiration of the said period, become vacant.

**26.** The Benchers shall, on the first meeting after their election, proceed to elect one of their body as Secretary and one of their body as Treasurer, who shall be and be called the President of the Society; and such Treasurer and Secretary shall hold office until the appointment of their successors; provided that the retiring Treasurer and Secretary shall be eligible for re-election.

**27.** In case of the failure in any instance to elect the requisite number of duly qualified Benchers, according to the provisions of this

chapter, or in case of any vacancy caused by the death or resignation of any Bencher, or by any other cause, then it shall be the duty of the remaining Benchers, with all convenient speed, at a meeting of the Benchers, to be specially called for the purpose, and to be held to supply the deficiency in the number of Benchers failed to be elected as aforesaid, or caused by any of the means aforesaid, to fill such vacancy by appointing to such vacant place or places, as the same may occur, any person or persons duly qualified under the provisions of this chapter to be elected as a Bencher or Benchers; and the person or persons so elected shall hold office for the residue of the period for which the other Benchers have been elected.

### Powers of the Benchers

**28**. The Benchers may, from time to time, in convocation, make rules for the government of the Law Society and other purposes connected therewith.

**29**. Upon any enquiry by the Benchers, or a committee of the Benchers, the Benchers or committee shall have power to examine witnesses under oath; and a summons under the hand of the Treasurer of the Law Society, or under the hand of three Benchers, for the attendance of a witness, shall have all the force of a subpœna; and any witness not attending in obedience thereto shall be liable to attachment in the Supreme Court.

**30**. The Benchers may appoint such officers and servants as may be necessary for the management of the business of the Law Society.

**31**. The Benchers may make rules for the improvement of legal education, and may appoint readers and lecturers; and may impose fees and prescribe rules for the attendance of students and articled clerks at such readings or lectures, and for the examinations thereon as conditional to call to the Bar, and admission as a Solicitor, and may establish scholarships and prizes in connection therewith.

**32**. The Benchers shall have the power heretofore exercised to call and admit to the practice of the Law, as a Barrister, any person duly qualified to be so admitted according to the provisions of law and the rules of the Society.

**33**. The Benchers may, from time to time, make all necessary rules, regulations and bye-laws respecting the admission of students-at-law, the call or admission of Barristers to practice the law, and all other matters relating to the discipline and honor of the Bar.

**34**. The Benchers, with the approbation of the visitors, shall, from time to time, make such rules as they consider necessary for conducting the examination of persons applying to be admitted as Solicitors, as well

touching the articles and service, and the several certificates required by law to be produced by them before their admission, as to the fitness and capacity of such persons to act as Solicitors, and may, from time to time, nominate and appoint examiners for conducting such examinations.

**35**. In any of the foregoing cases where it appears to the Benchers expedient for the purposes of further enquiry or investigation, they may suspend for a period not exceeding twelve months, their final decision in respect to the granting or refusal of any certificate

**36**. Whenever a person, being a Barrister or a Solicitor of the Supreme Court of Newfoundland, or a Student-at-Law, or Solicitor's Clerk, serving under articles, has been, or may hereafter be, found by the Benchers of the Law Society, after due enquiry by a committee of their number or otherwise, guilty of professional misconduct, or of conduct unbecoming a Barrister, Solicitor, Student-at-Law, or Articled Clerk, the said Benchers, in convocation, may disbar any such Barrister, and resolve that any such Solicitor is unworthy to practice as such Solicitor, and expel from the Society and the membership thereof such Student or Articled Clerk, and strike his name from the books of the Society and refuse either absolutely or for a limited period, to admit such Articled Clerk to the usual examinations, or to grant him the certificate of fitness necessary to enable him to be admitted to practise.

**37**. Upon a Barrister being disbarred as aforesaid, all his rights and privileges as a Barrister-at-Law shall thenceforth cease and determine, and notice of his being disbarred shall forthwith be given by the Secretary of the Law Society to the Supreme Court.

**38**. The non-payment of fees or fines due and payable to the Society by any Barrister, shall be sufficient cause for his being disqualified from practising, and the Benchers shall have power to make all necessary rules for giving effect to this section.

**39**. Upon its being resolved by a convocation that a Solicitor is unworthy to practise, a copy of the resolution shall forthwith be communicated to the Supreme Court, and thereupon he shall be incapable of practising, and be struck off the roll by the Court, or suspended from practise, as the case may be, unless the Court shall otherwise order, and until the suspension shall cease or he shall be restored by the Court. The same proceedings shall be had, and with the like effect, in respect of any resolution to expel or deprive of membership any Student-at-Law or Articled Clerk, or to refuse to admit him to examination or to grant him his certificate of fitness on the ground of misconduct or unbecoming conduct under section thirty-six

**40**. The following procedure shall be observed in respect of the disbarring of any Barrister;

(1.) Whenever it shall be resolved in convocation that a Barrister be disbarred, such Barrister may appeal therefrom to the next sitting of the Supreme Court, upon giving due notice, setting forth the grounds of appeal, within fourteen days after the passing of such resolution.

(2.) When such notice shall have been given, the Secretary of the Society shall transmit all papers connected with the charge and proceedings thereunder, and the evidence taken thereon before the Benchers, to the Supreme Court.

(3.) If no notice be given within the time specified, or in case such appeal be not prosecuted at the next sittings of the Supreme Court, the resolution of the said convocation shall stand confirmed.

(4.) When any charge shall be preferred to the Benchers against a Barrister, for which he may be disbarred, such Barrister, before being heard in defence, shall surrender to the Secretary his Barrister's certificate and his certificate of admission as a Solicitor of the Supreme Court.

(5.) In the case of the investigation by a convocation of Benchers of a charge against a Barrister, being a Bencher, such Barrister shall not be present at such convocation as a Bencher.

### The Library.

**41.** (1.) The Library of the Society shall vest in and be under the control and management of the Benchers, who shall have power, from time to time, to make all rules and bye-laws for the safe keeping and preservation thereof, the due maintenance of the same, and the regulation and keeping of order in the Library Rooms; and may impose fines upon the members of the Society for the non-observance of such rules and bye-laws.

(2.) The Benchers may appropriate, in their discretion, such money as may be from time to time in their hands, for the purpose of efficiently maintaining the said Library.

### Reporters.

**42.** (1.) The Benchers may, from time to time, appoint persons, being members of the Law Society, of the degree of Barrister-at-Law, to be editors and reporters of the decisions of the Supreme Court

(2.) Such persons shall hold office at the pleasure of the said Benchers, and shall be amenable to them in convocation for the correct

and faithful discharge of their respective duties, according to such regulations as the said Benchers may, from time to time, make in respect thereof.

**43.** The Benchers shall make regulations for printing and publishing the reports of said decisions, and the distribution of the reports and the price and mode of issuing thereof, and all such other regulations in respect thereto as they may at any time consider necessary, and any profits arising from the reports shall form part of the general funds of the Law Society.

**44.** The Benchers shall, from time to time, determine the remuneration to be allowed to the editors and reporters, and shall pay the same out of the general funds of the Society

### Annual and Special Meetings.

**45.** There shall be a general annual meeting of the Society at such time in the month of January in each year as the Benchers may appoint.

(1.) At such general annual meeting the Benchers shall report the general condition of the Society and its affairs, and may bring before the members of the Bar for consideration and discussion, such matters and subjects as the Benchers may think necessary for the promotion of legal education and the general interests of the legal profession and the improvement of the laws of the colony.

(2.) The Benchers may make rules and bye-laws for the conduct of the business and discussions at such meeting.

**46.** Ten or more members of the Bar may, at any time, by writing, under their hands, require the Benchers to call a special general meeting of the Society for any object for which the general interests of the Bar may demand such meeting.

(1.) Every such requisition shall express the object of such meeting, and the Treasurer shall call such meeting to be held within two weeks from the receipt of the requisition.

### Revenue and Expenditure.

**47.** All fees payable by Barristers and Solicitors, and for the annual certificates to practise, and by Students and Articled Clerks on admission as such, and on examinations and attendance on lectures and readings, shall be paid into the general funds of the Law Society, and shall be such as the Law Society from time to time prescribes.

**48.** (1.) The Benchers of the Law Society of Newfoundland shall have power to raise by loan, on the credit of the funds and property of the Society, by public advertisement and on

tender, or as the said Benchers may think fit, a sum of money not exceeding two thousand dollars, which sum, with interest thereon at the rate of five per centum per annum, shall, and is hereby declared to be a first charge by way of mortgage upon the funds and property of the Society, and shall be repayable out of the funds of the Society at the times and in the manner prescribed by the certificate in the schedule annexed to this chapter; and such certificate shall not be subject to the registration law of the colony.

(2.) The Benchers shall, out of the moneys of the Society, create a sinking fund in the Newfoundland Savings' or other Bank, of such annual sum as will, at the expiration of the time limited for the re-payment of the said loan, liquidate the amount thereof.

## PART II.

### Of Barristers-at-Law.

**49**. Subject to any rules, regulations or bye-laws, made by the Benchers of the Law Society, the following persons and no others may be admitted to practice at the Bar in Her Majesty's Courts in Newfoundland:

(1.) Any person of the age of twenty-two years, who shall have been entered of and admitted into the Law Society of Newfoundland as a Student of the Laws, and shall have been standing on the books thereof for five years, and has conformed himself to the rules of the Society, and who shall have been already enrolled a Solicitor of the Supreme Court.

(2.) Any person who has been admitted into and stands on the books of the Law Society of Newfoundland as a Student of the Laws for three years, and has conformed himself to the rules of the Society, and has, prior or subsequent to the date of his admission to the Society, and to the books of the Society as a student actually taken and had conferred upon him the degree of Bachelor, Master, or Doctor in Arts, Law or Science, (not being an honorary degree) in any of the Universities of the United Kingdom of Great Britain and Ireland, having power to grant degrees, or of any colonial or foreign University or College having power to grant degrees, and approved of by the Benchers, and who has been enrolled a Solicitor of the Supreme Court.

(3.) Any person who has been admitted into and stands on the books of the Law Society of Newfoundland as a Student of the Laws for four years, and has conformed himself to the rules of the Society, and has, prior or subsequent to the date of his admis-

sion to the said Society and to the books of the said Society as a student actually passed his matriculation examination in any of the Universities aforesaid; or prior or subsequent to the date of his admission to the books of the Society, shall have attended, with the consent of the Benchers, any recognized law school for at least two terms thereof under such rules and regulations as the Benchers may make under this section, and has been enrolled a Solicitor of the Supreme Court.

(4.) Any person who has been duly called to the Bar of England, Scotland, or Ireland, (excluding the Bar of Courts of merely local jurisdiction), on producing sufficient evidence of such call or admission, and testimonials of good character and conduct to the satisfaction of the Law Society, and has been enrolled a Solicitor of the Supreme Court.

(5.) Any person who has been duly called to the Bar of any of Her Majesty's Superior Courts in any of Her Majesty's colonies or provinces in which the same privilege would be extended to Barristers from Newfoundland, and who produces sufficient evidence of such call and testimonials of good character and conduct to the satisfaction of the Law Society and has been enrolled a Solicitor of the Supreme Court.

(6.) Any person who, having become a member of the Law Society of Newfoundland, and having conformed to its rules, shall have obtained his admission as a Solicitor under sub-sections six or seven of section fifty-two of this chapter.

## PART III.

### Of Solicitors.

**50.** Unless admitted and enrolled, and duly qualified to act as a Solicitor, no person shall act as a Solicitor in any Court of civil or criminal jurisdiction, or before any Justice of the Peace, or shall as such sue out any writ or process, or commence, carry on, solicit or defend any action or proceeding in the name of any other person, or in his own name.

### Who may be Admitted.

**51.** (1.) All persons heretofore admitted as Solicitors or Attorneys of, or by law empowered to practise in, the Supreme Court, shall be called Solicitors of the Supreme Court of Newfoundland, and shall be entitled to the same privileges, and be subject to the same obligations, so far as circumstances will permit, as they were entitled to be subject to prior to the first day of June, A. D. 1889.

(2.) Any Solicitors or Attorneys to whom this section applies shall be deemed to be officers of the Supreme Court as heretofore

(3.) No person shall be admitted a Solicitor of the Supreme Court who shall not have attained the full age of twenty-one years.

**52**—Subject to the provisions hereinafter contained, and to any rules and regulations made by the Benchers of the Law Society, the following persons, and no others, may be admitted and enrolled as Solicitors.

(1.) Any person who has been bound by contract in writing to a practising Solicitor in Newfoundland, to serve, and has served him as his Clerk for five years: Provided that the time of such service may be reduced for not more than one year where the said Clerk has, prior or subsequent to his having entered into such contract, attended for two terms at a recognized law school, with the approval and consent of the Benchers of the Law Society; and provided that if he shall have passed the terminal examinations for each of said terms, the time during which he shall have actually attended at such law school shall, for the purposes of this section, be computed as if it had been passed in actual service under his articles of Clerkship.

(2.) Any person who has actually taken and had conferred upon him the degree of Bachelor, Master, or Doctor in Arts, Law or Science, in any of the Universities or Colleges mentioned in sub-section two, of section forty-nine, and has been bound by contract in writing to a practising Solicitor in Newfoundland to serve, and has served him as his Clerk for three years.

(3.) Any person who has passed his matriculation examination in any of the Universities of the United Kingdom of Great Britain and Ireland, having power to grant degrees, and been bound by contract in writing to a practising Solicitor in Newfoundland to serve, and has served him as his Clerk for four years.

(4.) Any person who has been duly called to practice at the Bar of any of Her Majesty's Superior Courts (not having merely local jurisdiction) in England, Scotland or Ireland.

(5.) Any person called to the Bar of any of Her Majesty's Superior Courts in any of Her Majesty's colonies or provinces in which the same privilege is extended to Barristers from this colony.

(6.) Any person duly and lawfully sworn, admitted and enrolled as a Solicitor of Her Majesty's Supreme Court of Judicature in England or Ireland, or who has been a writer to the Signet or Solicitor in the Supreme Courts in Scotland.

(7.) Any Attorney or Solicitor of any of Her Majesty's Superior Courts of Law or Equity in any of Her Majesty's colonies or

provinces, where the same privileges are extended to Solicitors of the Supreme Court of this colony.

SERVICE OF ARTICLED CLERKS.

**53.** Subject to the powers of the Benchers of the Law Society, the following enactments are made with respect to the service of Articled Clerks:

(2.) Whenever any person has been bound by contract in writing to serve as Clerk to a Solicitor, such contract, with the affidavit of execution thereof annexed thereto, shall be filed with the Chief Clerk and Registrar of the Supreme Court, who shall endorse and sign upon the contract and affidavit a memorandum of the day of filing thereof, and every assignment of such contract, together with an affidavit of the execution thereof annexed thereto, shall be filed in like manner after the execution thereof. Every such affidavit shall state the date of the execution of the articles or assignment, as the case may be, by the parties thereto respectively. The term of service under articles to entitle an Articled Clerk to be admitted as a Solicitor, shall date only from the time of filing such articles, assignments and affidavits.

(2.) Every person authorized to practice as a Solicitor may have three Articled Clerks at one time and no more; and a Solicitor shall not have any Articled Clerk as aforesaid, until after he has practised for three years, nor if the Solicitor has discontinued practising as, or carrying on the business of, a Solicitor, nor whilst the Solicitor is employed as a writer or clerk by any other Solicitor; and the service by an Articled Clerk to a Solicitor, under any such circumstances, shall not be deemed good service under the articles.

(3.) In case any Solicitor, before the determination of a contract of a Clerk bound to him as aforesaid, has become insolvent, or taken the benefit of any act for the relief of insolvent debtors, or been imprisoned for debt, the Supreme Court may, upon the application of the Clerk, order the contract to be discharged or assigned to such person upon such terms and in such manner as the Court thinks fit

(4.) If a Solicitor to whom a Clerk has been so bound dies before the expiration of the term for which the Clerk became bound, or if he discontinues practice as a Solicitor, or if he ceases to reside in this colony, or if the contract is by the consent of the parties cancelled, or in case the Clerk is legally discharged before the expiration of the term by any rule or order of the Court, the Clerk may be bound by another contract in writing, to serve as Clerk to any other practising Solicitor during the

residue of his said term; and in case an affidavit is duly made and filed of the execution of such last mentioned contract within the time and in the manner hereinbefore directed, and subject to the like regulations with respect to the original contract and the affidavit of its execution, due service under such second or subsequent contract shall be deemed sufficient.

CONDITIONS OF ADMISSION AS SOLICITOR.

**54.** (1.) Subject to the rules, regulations and bye-laws made by the Benchers of the Law Society of Newfoundland, no person being of the class of persons mentioned in sub-sections one, two, and three, of section fifty-two, shall be admitted and enrolled as a Solicitor, unless—

(*a*) He has, during the time specified in his contract of service, duly served thereunder, and has, during the whole of such term of service, been actually employed in the proper practice or business of a Solicitor by the Solicitor to whom he has been bound at the place where such Solicitor has continued to reside during such term; nor unless—

(*b.*) He has, after the expiration of such term of service, been examined and sworn in the manner hereinafter directed; nor unless—

(*c.*) He has, at least fourteen days next before the first day of the sitting of the Supreme Court in which he seeks admission, left with the Secretary of the Law Society his contract of service, and any assignment thereof and affidavit of the execution of the same respectively, and his own affidavit of due service thereunder, and a certificate of the Solicitor to whom he was bound, of such due service; and in case he has taken a degree or matriculated or attended a law school, as hereinbefore mentioned, a certificate of his having taken such degree or matriculated or attended at a law school, or a duly authenticated certified copy of such certificate.

(2.) The affidavits shall be in the form approved of by the visitors of the Law Society, and shall by the applicant be delivered to the Law Society upon his application to be examined.

(3.) No candidate shall be admitted unless he takes the oath of allegiance and makes and subscribes the oath or affirmation following:

"I, A. B, do swear (or solemnly affirm, as the case may be), that I will truly and honestly demean myself in the practice of a Solicitor according to the best of my knowledge and ability. So help me God."

EXAMINATIONS.

**55.** Subject to any rules, regulations and bye-laws made by the Benchers of the Law Society of Newfoundland, the following enactments are made with respect to the examination of Articled Clerks and candidates for admission as Solicitors.

(1.) The Benchers of the Law Society of Newfoundland may, by regulation, require that a *preliminary* examination shall be passed before a Clerk shall be bound under articles.

(2.) No person being of the class of persons mentioned in sub-sections one, two, and three, of section fifty-two, shall be admitted or enrolled as a Solicitor, unless he shall have passed an intermediate and final examination at the time and in the manner prescribed by the rules and bye-laws of the Society.

(3.) In case any person is prevented by illness or other unavoidable cause from presenting himself for, or fails to pass either of the examinations by this section required, within the time specified in the rules or bye-laws, the Benchers may, in their discretion, permit such person to pass such examination at other times, but not less than twelve months shall elapse between the first and the second of such examinations, and not less than twelve months shall elapse between the second of such examinations and the final examination.

(4.) No Bencher or Examiner shall take part in any examination or any question respecting the service of an Articled Clerk who shall have completed his term of service with such Bencher or the partner of such Bencher or Examiner.

**56.** Subject to the rules and regulations of the Law Society of Newfoundland, as aforesaid, no candidate for admission, being of the class of persons respectively mentioned in sub-sections four, five, six and seven, of section fifty-two of this chapter, shall be admitted, unless—

(1.) Such candidate, at least fourteen days before the first day of such term, leaves with the Secretary of the Law Society—

(*a.*) In the case of a Barrister, a certificate under the seal of the Society or Inn of Court of which he is a member, duly attested under the proper hand of the proper officer thereof, that he has been duly called to the Bar, and was at the date of such certificate on the books of such Society or Inn of Court, and also an affidavit of the applicant to the satisfaction of the Benchers of the Law Society, that since his admission to the Bar no application to any Society or Inn of Court has been made against such person to disbar him, or otherwise to disqualify him from further practice for misconduct in such his capacity of Barrister.

(*b.*) And in the case of an Attorney or Solicitor, a certificate under the seal of the proper Court or Courts, duly attested under the hand of the proper officer thereof, that he was duly admitted and enrolled as such Attorney or Solicitor, and was at the date of such certificate on the roll of Attorneys or Solicitors of such Court or Courts; and also an affidavit of the applicant that since his admission, as aforesaid, no application to any such Court or Courts, as the case may be, has been made against such person to strike him off the roll of any such Court or otherwise to disqualify him in the capacity of Attorney or Solicitor.

(2.) The certificates respectively shall bear date within six months of the first day of the sitting of the Court or term during which the application is made.

**57.** The Benchers of the Law Society of Newfoundland, with the approbation of the visitors, shall, from time to time, make such rules as they consider necessary for conducting the examination of persons applying to be admitted as Solicitors, as well touching the articles and service and the several certificates required by law to be produced by them before their admission, as touching the fitness and capacity of such persons to act as Solicitors; and the Society may, from time to time, nominate and appoint examiners for conducting such examinations.

**58** The Benchers of the Law Society, upon proof to their satisfaction of the requirements of this chapter having been complied with, shall examine and enquire by such ways and means as they think proper touching the fitness and capacity of any applicant for admission to act as a Solicitor; and if satisfied by such examination, or by the certificate of the examiners mentioned in section fifty-seven of this chapter, that such person is duly qualified, fit and competent to act as a Solicitor, the Society shall give a certificate under the corporate seal of the said Society of the due service under contract in writing, of such person, and of his fitness and capacity, and of his having duly complied with the requirements of this chapter, and that he is in all respects duly qualified to be admitted as a Solicitor.

**59.** Upon production to one of the Judges of the Supreme Court annexed to such certificate of the original contract of service, and any assignments thereof, and the affidavits of due service thereunder, and all other certificates hereinbefore required, such Judge, upon being satisfied of the fitness and capacity of the candidate, shall endorse his fiat of admission upon the certificate of the Law Society; and thereupon the Supreme Court shall, upon such person taking in open Court the oaths hereinbefore directed to be taken by Solicitors, cause him to be admitted, and his name to be enrolled as a Solicitor, and a certificate of such admission given by the Chief Clerk and Registrar of the Supreme Court, under the seal of the Court, and the documents upon which the admission

has been obtained shall be filed and retained of record in the office of the Court.

FEES.

**60.** The following fees shall be payable to the Chief Clerk of the Supreme Court for the Law Society under this chapter, that is to say:

| | |
|---|---|
| 1. On filing articles ... ... ... ... ... | $5.00 |
| 2. Assignments, if any ... ... ... ... ... | 2.50 |
| 3. Every affidavit ... ... ... ... ... | 50 |
| 4. Every certificate ... ... ... ... ... | 2 50 |
| 5. Every fiat or admission ... ... ... ... | 5.00 |
| 6. For every writ, whether mesne or final, issued by a Solicitor out of the Supreme Court in St. John's ... ... ... | 25 |

Such fees when received, shall be paid to the Secretary for the purposes of the Law Society.

ANNUAL CERTIFICATES.

**61.** The Chief Clerk and Registrar of the Supreme Court shall, annually, during the first week in January in every year, deliver to the Secretary, certified under his hand and the seal of the said Supreme Court, a copy of so much of the roll as contains the names of Solicitors admitted to practice subsequently to the last return made to the said Secretary.

**62.** The Secretary shall enter all such certified copies in a book to be kept in his office for that purpose, affixing to each name a number, following in consecutive order the numbers affixed to the names previously entered.

**63.** The Secretary shall, in another book, to be kept in his office for that purpose, enter all the names contained in the copies so transmitted to him, alphabetically arranged, with a reference to the number of each name on the roll; and shall annually, on or before the first Monday of January in each year, put up in the library of the Society, and also in the office of the Chief Clerk and Registrar of the Supreme Court, an alphabetical list certified by him, under his hand, of all Solicitors who have taken out their certificates for the current year, and shall, from time to time, add to such lists the name of each Solicitor who takes out a certificate at a subsequent period of the year, noting thereon the time when the certificate was taken out

(1.) Every practising Solicitor shall obtain from the Secretary of the Law Society, annually, before the first Monday in January, a certificate under the seal of the said Society, stating that he is a practising Solicitor in the Supreme Court.

(2.) Such certificate shall be issued by the Law Society, under the seal of the Society, according to the list of names appearing

on the roll of Solicitors certified to the said Secretary, as aforesaid.

(3.) Upon the payment of all fees and dues payable by such Solicitor to the said Society, the Secretary shall write his name on the margin of the certificate, with the date thereof, and the certificate shall be taken as issued only from such date.

(4.) The Law Society shall determine what fees shall be payable for certificates.

**64**. No certificate shall be issued to any Solicitor who is indebted to the Society for any fee or fine payable to the Society, nor until the annual fee for each certificate prescribed by the rules of the Society is paid.

**65**. No Solicitor admitted as aforesaid, need take out any such certificate until the first Monday in January next following his admission.

(1.) If a Solicitor omits to take out such annual certificate, as aforesaid, he shall not be entitled thereto until he pays to the Law Society not only a certificate fee, so appointed, as aforesaid, together with any other fees or dues which he owes to the Society, but also an additional sum by way of penalty, as follows:

(2.) If such certificate is not taken out before the first Monday in February, the further sum of one dollar; if not before the first Monday in March, the further sum of two dollars; and if not before the first Monday in May, the further sum of three dollars; and if not taken out before the 20th day of May, the further sum of five dollars.

**66**. If a Solicitor, or any member of a firm of Solicitors, either in his own name or in the name of any member of his firm, practises in the Supreme Court without such certificate being taken out by him and by each member of his firm, he shall forfeit the sum of two hundred dollars, which forfeiture shall be paid to the Law Society for the uses thereof, and may be recovered in the Supreme Court in the name of the Law Society which shall sue for the same.

**67** If a Solicitor practises in the Supreme Court, Vice-Admiralty Court, Sessions Court or Districts Courts without such certificate in each and any year of his practice, he shall be liable to be suspended from practice for such offence for a period of not less than three months nor more than twelve months, and to continue so suspended until the fee upon his certificate for the year in which he so practised without certificate is, together with a penalty of fifty dollars, paid to the Law Society.

**68**. In case a Solicitor is a prisoner, in any gaol or prison, he shall not during his confinement therein, or within the limits thereof, com-

mence, prosecute or defend as such Solicitor any action in any Court nor act in any manner in bankruptcy or insolvency; and any Solicitor so practising, and any Solicitor permitting or empowering him so to practise in his name, shall be guilty of a contempt of the Court in which any such proceedings take place, and upon the application of any person complaining thereof shall be punishable by such Court accordingly; and such Solicitor shall be incapable of maintaining any action for the recovery of any fee, reward or disbursement for or in respect of any matter or thing done by him whilst a prisoner, as aforesaid, in his own name or in the name of any other Solicitor.

**69.** In case a Solicitor wilfully and knowingly acts as the professional agent of any person not duly qualified to act as a Solicitor, or suffers his name to be used in any such agency on account of or for the profit of an unqualified person, or sends any process to such person or does any other act to enable such person to practise in any respect as a Solicitor, knowing him not to be duly qualified, and in case complaint is made thereof in a summary way to the Supreme Court, and proof is made upon oath to the satisfaction of the Court, the Solicitor so offending may, in the discretion of the Court, be struck off the roll and disabled from practising as such Solicitor; and the Court may also commit such unqualified person, so having practised as aforesaid, to any common goal or prison for any term not exceeding one year.

**70.** The Supreme Court may fine or suspend any Solicitor, or strike his name off the roll of Solicitors of the Court for default by him in the payment of moneys received by him as a Solicitor.

**71.** In case any person, unless himself a plaintiff or defendant in the proceeding, commences, prosecutes or defends in his own name or that of any other person, any action or proceeding without being admitted and enrolled as aforesaid, he shall be incapable of recovering any fee, reward or disbursements on account thereof, and such offence shall be a contempt of the Court in which such proceeding has been commenced, carried on or defended, and punishable accordingly.

**72.** No Solicitor shall practice in any Court in Newfoundland, either in his own name or by his partner, deputy or agent, or in the name of any other person, or otherwise, directly or indirectly, while he holds, possesses, practises, carries on or conducts any of the offices of Chief Clerk and Registrar of the Supreme Court, Assistant Clerk of the Supreme Court, Clerk of the Peace, Clerk of any District Court, or Sheriff, and every person so practising shall be subject to the forfeiture of such office, and shall, in addition thereto, be subject to a penalty of five hundred dollars, to be recovered in an action in the Supreme Court by any Solicitor who shall sue for the same, which penalty, when recovered, shall be paid to the Law Society for the uses thereof.

**73.** No Solicitor shall practice in any of the Courts of Newfoundland during the time he is engaged in the business of a merchant or connected

by partnership, public or private, in purchasing or vending merchandize in the way of trade as a merchant, nor until after he has ceased to be such merchant or to be so engaged or to be connected as aforesaid.

TIME LIMITED FOR STRIKING A SOLICITOR OFF THE ROLL.

**74**. Except in case of fraud, no person admitted and enrolled shall be struck off the roll on account of any defect in the articles of clerkship or in the registry thereof, or in his service thereunder, or in his admission and enrolment, unless application for striking him off the roll is made within twelve months next after his admission and enrolment.

PROCEEDINGS IF STRUCK OFF THE ROLL.

**75**. When a Solicitor is struck off the roll of the Supreme Court the Chief Clerk and Registrar of the Supreme Court shall certify the same under his hand and seal of the Court to the Secretary of the Law Society, stating whether such Solicitor was struck off at his own request or otherwise, and the Secretary shall, in the book to be kept by him as aforesaid, make a note opposite the name of such person of his having been struck off the roll.

## SCHEDULE.

We, , Treasurer, and , Secretary of the "Law Society of Newfoundland," hereby certify that by virtue of section forty-eight of chapter fifty-four of the Consolidated Statutes, second series, entitled "Of the Law Society, Barristers and Solicitors," authorising the Law Society of Newfoundland to raise by loan a sum of money for the purpose of the said Society, we have received by way of loan from the sum of dollars, bearing interest at the rate of five per cent per annum, payable half-yearly on the last days of June and December in each year, until after the expiration of twenty-five years from the date hereof, when the same shall be repayable to the said .

And it is hereby covenanted that this certificate shall operate as a mortgage on all the funds and property of the said Society for the securing of the payment of the said principal and interest when due thereunder, and without being subject to the registration law of this colony.

Given under our hands and the seal of the Law Society of Newfoundland, at St. John's, this day of , A. D. 189 .

A. B,
*Treasurer.*

{ Seal of the Law Society. }

C. D.,
*Secretary.*

# CHAPTER 55.

## Of Sheriffs.


SECTION
1.—Sheriff for each judicial district.
2. —Duties and authority, &c., &c.
3.—Sheriffs of Northern and Southern Districts to appoint Deputies.
4.—Sheriff of Central District may appoint Deputy.
5. —Special deputations.


**1.** There shall be a Sheriff for each judicial district of this island, who shall be appointed by the Governor in Council, and who shall hold office during pleasure, and who shall upon his appointment take such oaths and give such security as may be required for the performance of his duties.

**2.** The duties, power, authority and privileges of the said Sheriffs, as the same are now had, performed, exercised and enjoyed, are continued subject to any extension or alteration in these Consolidated Statutes contained.

**3.** The Sheriffs for the northern and southern judicial districts respectively, shall, from time to time, appoint and duly authorize, under their respective hands and seals, in the principal places within their respective judicial districts, a Deputy or Deputies, for the service and execution of all writs, rules, orders, and other process of the Supreme Court, which Deputy or Deputies shall possess, exercise, and discharge there the same powers and duties as the Sheriff if personally present; and for the acts of such Deputy or Deputies, where the process passes through the hands of the Sheriff, and not otherwise, the Sheriff making such appointments shall be responsible; and it shall be sufficient in all cases to deliver or cause to be delivered any writ, rule, or other process as aforesaid, to the Deputy Sheriff of the district wherein the same is required to be executed without transmitting the same through the Sheriff; and the said respective Sheriffs are hereby required to furnish to each other and to the Sheriff of the Central District, for the information of all parties requiring the same, the names and additions of the Deputies appointed; and from time to time, in like manner, to furnish the names and additions of any further or other Deputies appointed, within one month after such appointment; and the Sheriff of the Central District, as well as the Sheriffs of the other districts aforesaid, shall keep hung up in their respective offices a list of such Deputies.

**4** The Sheriff of the Central District may within the Central District appoint a Deputy or Deputies for whose acts he shall be responsible.

**5.** The said Sheriffs shall grant special deputations when required for the purpose of executing process either within or beyond the limit of their districts, and in any other part of this colony or its dependencies, when in the latter case such process may lawfully run beyond such limits; but the said Sheriffs shall not be responsible for the execution of such process by special deputation, but shall require the party applying for such special deputation to give security for the faithful execution of the process; and the party so applying and his sureties shall be liable to third parties for injury arising in or about the execution of the process in the same way as the Sheriff would have been liable to such third parties: Provided that the Sheriff shall be responsible for having taken insufficient security.

# CHAPTER 56.

## Of Trial by Jury.


SECTION
1.—Qualification of Grand Jurors in the Central District.
2.—Qualification of Petty Jurors.
3.—Qualification of Grand Jurors in Northern and Southern Districts.
4.—Qualification of Petty Jurors in Northern and Southern Districts.
5.—Jurors to serve in Courts of Quarter Sessions.
6.—Magistrates to make lists of Jurors and return same to Sheriff. Revision.
7.—Lists to be open to the inspection of the public.
8.—Lists of persons removed from Panel to be kept by Sheriff, &c.
9.—Persons on revised lists of Jurors liable to serve for current year.
10.—Mode of drawing and summoning Grand Jurors.
11.—Mode of drawing and summoning Petty Jurors and the time they shall serve.
12.—Mode of drawing and summoning Petty Jurors outside St. John's.
13.—Power and authority of Courts to prolong attendance of Jurors.
14.—Special Juries in criminal cases.
15.—Copy of rule to be served on opposite party.
16.-17.—Mode of drawing such Jury.
18.—In case of insufficiency of Jurors Court may order additional Jurors to be summoned.
19.—Mode of selecting Jurors to try cases.
20.—Right of challenge on felonies and other criminal cases.
21.—In civil cases either party may take a rule for a Special Jury.

SECTION
22.—Mode of summoning Special and Petty Jurors in civil cases.
23.—In criminal cases Jury to be drawn in Court.
24.—Right of challenge in civil cases and upon misdemeanours.
25.—Parties excepted from serving on Juries.
26.—Grand Juror not liable to serve as a Petty Juror—exception.
27.—Service of summons on Jurors.
28.—Penalties for non-attendance.
29.—Special attendance of Jurors on commissions or precept.
30.—Juries in civil cases to consist of nine persons.
31.—Practice of keeping Jurors without meat, &c., abolished.
32.—Juror challenged may be examined.
33.—Jurors in criminal cases sworn simultaneously.
34.—Persons convicted of treason, &c., not competent to serve as Jurors.
35.—Short attendance of Jurors Court may order attendance of additional Jurors.
36.—Irregularities in compiling, &c., lists, no cause of challenge.
37.—Irregularities in summoning Jury cause of challenge only.
38.—Juror not a British subject or under age ground of challenge only.
39.—Person to mean male person.
40.—Juries *de medietate linguæ* abolished.
41.—Trial of challenges for cause by Court.
42.—Fund for payment of Petty Jurors.


**1.** Every person not herein, or not otherwise by law exempted, residing within three miles of the Court House in St John's, and being a merchant or the chief accredited agent of any mercantile establishment,

or a gentleman, or being worth or possessed of property of any description, within the said limits, clear of all incumbrances, of the value of two thousand dollars, or any person owning or occupying a house, land, or tenement, within the said limits, of the annual rent or value of two hundred and forty dollars, shall respectively be qualified and liable to serve as a grand juror in any Court within the Central District of this island.

**2**. Every person not herein or otherwise by law exempted, residing within three miles of the Court House in St. John's, who shall have resided twelve months within this colony, and who shall, within the limits of the Central District, own, occupy, or possess a house, or tenement, or land, of the annual rent or value of fifty dollars, shall be qualified and liable to serve as a petty juror for the said district.

**3**. Every person not herein or otherwise by law exempted, residing within at least seven miles from any place where the Supreme Court on circuit shall be holden in the Northern or Southern District of this island, and being a merchant or the chief accredited agent of any mercantile establishment, or a gentleman, or being the owner of property within the said limits, clear of all incumbrances, of the value of eight hundred dollars, or owning or occupying a house, land, or tenement, if at Harbor Grace, of the annual rent or value of fifty dollars, shall be qualified and liable to serve as a grand juror within the limits of the said districts.

**4**. Every person not herein or otherwise by law exempted, residing within the limits mentioned in the third section, and owning real property to any amount within the said limits, or occupying or possessing a house, land, or tenement within the said limits, of the annual rent or value of sixteen dollars, shall be qualified and liable to serve on petty juries within the said limits in the said district.

**5**. All persons liable to serve on the said respective juries in the said Courts, except Justices of the Peace, shall be also liable to attend and serve as such jurors as aforesaid in the several Courts of Sessions in this island, when duly drawn and summoned in the manner hereinbefore prescribed, as far as the same can be made applicable, and subject to the like penalties for non-attendance: Provided that no jurors residing further than two miles from Harbor Grace, or an equal distance from Carbonear, shall be summoned to attend at the Court of Sessions held in either of the said respective places.

**6**. Where lists have not already been made, the Stipendiary Magistrate, or any other Magistrate appointed by the Governor for the purpose, where there is no Stipendiary Magistrate resident in any of the places where any Court may be held, shall superintend and direct the making out of separate lists of all persons qualified to serve on grand and petty juries respectively, in such districts or places, and shall arrange the same in the respective panels in alphabetical order, with the occupation and

place of abode of each person stated, and after revision shall deliver the same to the Sheriff of the district in which the same shall be taken. Such lists of jurors shall be made and taken annually during the first three weeks of January, and the said Magistrates shall revise the lists of grand and petty jurors. Such revision shall take place within ten days, commencing on the first Tuesday in February, on alternate days during the said period. Sufficient public notice of the place at which, and the days and the hours in every day during which such revision shall be held, shall be given either by publication in one or more newspapers, or by posting the same on the doors of the Court Houses or other public buildings. The Magistrates shall within two weeks after every revision return the said lists duly revised to the Sheriff, and a list of all jurors who, upon such revision, shall be exempted or cease to be qualified, and of all others who shall have become qualified to be placed on such lists. For every such return there shall be paid from the public treasury to the Stipendiary Magistrate, for every one hundred names so returned, the sum of eight dollars, one-half thereof to be paid to the officers employed by him.

**7.** The said lists shall be open to the inspection of the public in the respective offices of the said Sheriffs and of the Magistrates engaged in revision, and in case the name of any person qualified to serve as a grand or petty juror shall not appear on any of the said lists, or the name of any person exempt or not qualified shall appear thereon, the Magistrate having charge of such lists shall correct any such error or supply any such omission by inserting or omitting the name, as the case may require.

**8.** When members of the panel are for any cause permanently removed from it, lists of those thus exempted from further service shall be kept by the Sheriffs, and return made to the revising Magistrates, according as the exemptions occur in the Supreme Court; and in the Court of Sessions such lists of exemption shall be kept by the Magistrates.

**9.** All persons, other than persons not qualified to be jurors, or hereinafter exempted, whose names shall appear on the revised lists of jurors exhibited for public inspection after any annual revision shall be liable to serve for the then current year. This section shall not prevent the transfer, by the Court, of any person, duly qualified, from the petty to the grand jury panel, nor prevent challenge for cause.

**10.** All the names of persons qualified to serve as grand jurors, together with their respective occupations and places of abode, shall be written or printed on separate cards, and at least fourteen days before the commencement of each term to be holden at St. John's, and at least six days before the first day of each term to be holden at Harbor Grace, and at least a day before such grand jurors shall be required to attend Court in any other place in this island, the respective Sheriffs shall attend with the said cards before the respective Clerks of the said Courts, or their respective deputies, who shall compare the same with the lists of the

grand jurors furnished as aforesaid; and the said cards containing the names of the whole of the said jurors shall be put into a box in presence of the said respective Clerks, and the first twenty-three persons whose names shall be first drawn by the Sheriff, shall be summoned at least four days before the commencement of each term of the said Courts to be holden at St John's and Harbor Grace, and at least the day before they shall be required to attend any Court to be holden in any other place in this island, and serve as grand jurors for and during such term

**11.** All the names of persons qualified to serve as petty jurors in St. John's, together with their respective occupations and places of abode, shall be written or printed on separate cards; and at least fourteen days before the commencement of each term, to be holden in St. John's the Sheriff of the Central District, or his deputy, shall attend with the said cards before the Clerk of the Supreme Court, or his deputy, who shall compare the same with the lists furnished, as aforesaid, and the said cards, containing the names of the whole of the said jurors, shall be put into a box, in the presence of the said Clerk, and the first forty-eight persons whose names shall be first drawn by the Sheriff shall be summoned at least four days before the commencement of such term of the said Court, to be holden in St John's, to be and serve as petty jurors, for and during the first ten days of the said term, and the next forty-eight persons whose names shall be drawn therefrom shall be summoned at least four days before the tenth day of said term, and the said persons so summoned shall in like manner attend and serve as petty jurors for the next ten days of the said term and *toties quoties* for the remainder of the said term.

**12.** All the names of persons qualified to serve as petty jurors in any place elsewhere than in St John's, together with their respective occupations and places of abode, shall be written or printed on separate cards, and at least the day before the jurors shall be required to attend Court, the Sheriff of the district in which such Court shall be holden, or his deputy, shall attend with the said cards, before the Clerk of the said Court, or his deputy, who shall compare the same with the lists furnished, as aforesaid, and the same course shall be pursued, as nearly as may be, in drawing and summoning petty jurors for the said Courts, as above provided for St. John's; but it shall not be necessary to summon more than twenty-four jurors to attend such Courts at any one time in any one district during any one term, or sittings of such Court therein; which jurors shall attend during the whole of such term or sitting, except when any criminal causes are to be tried, when thirty-five jurors shall be summoned on each panel.

**13.** The said Courts shall have power and authority to prolong the attendance of the said jurors if necessary, beyond the time hereinbefore limited for their attendance; and no grand or petty jurors shall be drawn oftener than one term in any year, unless in case of deficiency in the numbers of jurors, when the names of such as have been summoned on

previous juries shall be returned to the box to be drawn in like manner: Provided that no person drawn as a grand or petty juror shall be again drawn as such until the list containing the name of such juror shall have been exhausted.

**14.** The Supreme Court in St John's or on circuit may, within forty-eight hours after the cause is at issue, and after hearing the parties, grant to either party to any indictment, or information, whether for felony or misdemeanor, pending in the said Court, a rule for a special jury for the trial of such indictment or information: Provided that the Court may, for sufficient cause, grant such rule at any time after the said forty-eight hours.

**15.** A copy of the rule or order for such special jury shall be served upon the opposite party or his solicitor, on the day of issuing the same, with an appointment from the Sheriff or his deputy to draw the Jury on the following lawful day, at a time and place to be therein named.

**16.** At the time and place so appointed, either party or his solicitor or counsel, may be and continue present during the drawing of the jury as hereinafter provided; but the presence or absence of either party shall not prejudice his right of objection or exception to such drawing, or the mode thereof, or any part thereof.

**17.** At the time and place so appointed, or so soon thereafter as the Sheriff may, without undue or unreasonable inconvenience to either party appoint, the Sheriff or his deputy shall, in the presence of the parties or their solicitors or counsel, or such of them as shall attend, or if none of them shall attend, then in their absence draw forty-eight names from the box containing the names of the grand jurors, for that term (setting aside such as are then summoned to attend upon the grand jurors, except in cases where a deficiency would thereby arise,) and make a list of them as they are drawn. The said forty-eight jurors shall form the special panel for the trial of the cause, to be summoned by the Sheriff at least the day before their attendance shall be required for the trial of the cause.

**18.** Whenever it shall appear to the Court that from any cause, the number of such special jurors in attendance may not be sufficient to furnish a full jury for the trial of the cause, the Court may at any time before the jury are sworn, order that an additional number of jurors, to be determined by the Court, be forthwith drawn and summoned. The said additional jurors shall be drawn from the box containing the names of the grand jurors, in the same manner as hereinbefore provided for the drawing of the said forty-eight jurors.

**19.** The names of the persons returned to serve on such special jury, together with their respective occupations and places of abode having been written or printed on separate cards, the said cards shall be put into a box

in open Court, and the twelve persons present in Court whose names shall be first drawn, shall be the special jury to try the said cause, except where any of the said jurors shall have been set aside for challenge.

**20.** Upon the trial of an indictment for a capital felony, the accused shall have the right peremptorily to challenge twenty special jurors. In all other cases the accused shall have the right peremptorily to challenge thirteen special jurors. In any case where there are more than one person charged in the same indictment no greater number than twenty peremptory challenges, if the charge be one of capital felony, or thirteen in any other cause, shall be allowed.

**21.** Any party to a civil cause or issue pending in any of the said Courts may take a rule for a special jury as of course within twenty-four hours from the time of docketing the cause for trial upon filing a motion paper, or the said Courts may grant a rule for a special jury if it think fit after the expiration of such time. A copy of such rule shall be served at the address of the opposite party or of his solicitor on the day of issuing the same, with an appointment from the Sheriff or his deputy to draw the jury on the following lawful day at an hour to be named therein. The course of procedure for the drawing and summoning of such jury shall be as follows:—

The Sheriff or his deputy shall, in the presence of the parties or their solicitors, or such of them as attend, draw thirty-one names from the box containing the names of the grand jurors, setting aside such as are then summoned to attend upon the grand jury for that term, except in cases where a deficiency would thereby arise, and make a list of them as they are drawn. The plaintiff and defendant, or, in the absence of either, the Sheriff or his deputy for the absent party, shall then alternately strike off a name until each has stricken off seven, and the remaining seventeen shall form the special jury panel, to be summoned by the Sheriff at least the day before their attendance shall be required for the trial of the cause

**22.** The names of persons returned to serve on special or petty juries, together with their respective occupations and places of abode, being written or printed on separate cards, whenever a jury shall be required to try a civil cause, whether the cause be a petty or special jury cause, the cards containing the names of the special or petty jurors summoned, as the case may be, shall be put into a box in open Court, and the first nine persons whose names shall be first drawn, and then present in Court, shall be the jury to try the said cause, except where any of the said jurors shall have been set aside for challenge; in any case in which a sufficient number of jurors shall not appear or remain unchallenged, or otherwise, to try the cause, then, and in such case, a *tales de circumstantibus*

shall be awarded and immediately returned by the Sheriff from the qualified petty jurors or the by-standers there present; and in any petty jury cause, after the first in each term, the Clerk having returned into the box the names of the petty jurors who have been challenged, or who have not appeared, shall proceed to draw the jury therefrom until all the names have been drawn, when the names of such as have served on previous juries shall be returned to the box to be drawn in like manner.

**23**. In criminal cases the juries for the trial of the same shall be drawn by the Clerk from the whole panel in attendance on the Court, instead of from those only who have not served on previous juries, the names of all jurors then in attendance being placed in the box for that purpose.

**24**. On every trial of any civil cause or issue, either party in any jury case, and upon the trial of any information or indictment for a misdemeanour, either party in a petty jury case may peremptorily challenge three jurors or talesmen as they come to the book, and such challenge shall be admitted by the Court, but shall not affect any other right of challenge the party challenging now has or may have, nor if such party consist of several persons, give a right to challenge more than three jurors.

**25**. The following persons, although they may not have applied to have their names erased from the list, shall be exempt from serving on grand, special and petty juries in the said several Courts, that is to say: the Colonial Secretary, Receiver General, Surveyor General, Chairman of the Board of Works, and Financial Secretary of this Colony; the members of the Executive Council, and of the Legislature, Stipendiary Magistrates, the officers of the several Courts of Justice, household servants of the Governor, Sheriffs' officers, Postmaster General and officers and servants of the Post Office, officers of the army and navy in actual service, the clerks in the several departments of the army, the officers and clerks belonging to the civil departments of Her Majesty's Government, clergymen, barristers, solicitors, physicians, surgeons, apothecaries; managers, clerks and cashiers of banks, electric telegraph operators, schoolmasters, pilots licensed under any act of the Legislature, masters and engineers of tugboats belonging to St. John's, persons under twenty-one and over sixty years of age, and organized enginemen and firemen in St. John's and Harbor Grace only, upon their making oath of their due and actual admission and enrolment as members of such companies twelve months preceding the application for exemption, together with a certificate from the superintendent or chief officer of the respective companies of their conformity during that period to the rules thereof.

**26**. No grand juror shall be liable to serve on a petty jury except as a talesman.

**27.** In every case the summons for every grand, special or petty juror shall be served upon him personally, or left at his usual place of business or abode for him.

**28.** The Court shall have power to impose upon any persons summoned to attend as jurors who, not being prevented by sickness or other reasonable cause, fail to appear and serve, the following fines:—

(*a.*) Upon a grand juror, not exceeding twenty dollars, nor less than four dollars.

(*b.*) Upon a special juror, in a criminal case, not exceeding two hundred dollars.

(*c.*) Upon a special juror, in any other case, not exceeding twenty dollars, nor less than four dollars.

(*d.*) Upon a petty juror, not exceeding four dollars, nor less than one dollar.

For every day's default, which respective penalties having been recovered, if necessary, by distress and sale of the offender's goods and chattels, shall be paid to the Clerk of the Court, and by him handed over to the Receiver General, at the end of the term wherein the same shall have been enforced, for the use of the colony.

**29.** All persons liable to serve on the said respective juries shall be liable to serve as such jurors as aforesaid, under special commission, at every other period than the usual term of the Courts that may be stated in such commission, or at such time as any of the Judges of the Supreme Court or Justices of the Quarter Sessions may direct in any precept to be issued by any of them.

**30.** Every special or petty jury for the trial of civil causes or issues within this colony, shall consist of nine persons, of whom, if the nine cannot agree upon an unanimous verdict after three hours' deliberation, seven may return a verdict.

**31.** The practice of keeping a jury without meat or drink, or other comfort, until they agree upon their verdict, is hereby abolished.

**32.** A juror challenged for want of qualification may be examined as to the ground of challenge by the Court, or by either party in the cause.

**33.** Jurors in criminal cases may be sworn simultaneously, as in civil suits, as soon as a full jury shall appear, after disposal of challenges and exceptions.

**34.** No person convicted of treason or felony, perjury or subornation of perjury, shall be competent to serve on any jury unless he shall have received a free pardon.

**35.** The Supreme Court in St. John's or on circuit may, upon any occasion when there shall be a short attendance of petty jurors in the said Court, or when a pressure of business or the exercise or the probability of the exercise of the right of challenge shall seem to the said Court to require such a course, or when the term of attendance of the regular panel has expired, issue one or more precepts for the attendance of additional jurors, who shall be summoned and shall attend forthwith, and who shall be subject to the provisions of this chapter, and shall serve for such time as may be required by the Court.

**36.** Irregularities in compiling, revising or returning jury lists, shall be no cause of challenge or other exception.

**37.** Irregularities in drawing, summoning and returning any jury panel shall be subject of exception on challenge only, and not otherwise.

**38.** The fact that a person, called as a juror, is not a British subject, or is under twenty-one years of age, shall be ground for challenge only.

**39.** "Persons" in this chapter shall mean male persons.

**40.** The right of an alien to be tried by a jury *de medietate linguæ* is hereby abolished, and he shall be tried in the same manner as if he were a natural born subject of Her Majesty.

**41.** The trial and determination of the sufficiency of any kind of challenge for cause, shall rest with the Court without jurors or triers.

**42.** To provide a fund towards the payment of petit jurors in Saint John's who may attend Court without being sworn for the trial of a cause, a fee of one dollar shall be paid into the office of the Chief Clerk and Registrar by the plaintiff upon the issue of all process for all amounts over one hundred dollars, and issued in St. John's, and upon the placing of a cause upon the docket for trial; provided such cause is tried by a jury, a further sum of two dollars The Judges of the Supreme Court may, by rules, define the amount which such jurors shall receive, and the conditions upon which they shall be entitled to participate in the said fund.

# CHAPTER 57.

## Of Evidence.


SECTION
1.—Parties to actions, &c., to be witnesses for and against each other.
2.—Parties not competent as witnesses.
3.—Husband or wife not compelled to disclose communications between them.
4.—Parties to actions for breach of promise of marriage competent witnesses.
5.—Privilege of clergymen.
6.—Foreign and colonial acts of state, judgments, &c., how provable.
7.—Documents admissible without proof of seal, &c.
8.—Registers of vessels *prima facie* evidence, &c.
9.—Examined or certified copies of documents admissible in evidence.
10.—Certifying a false document a misdemeanor.
11.—Courts and others empowered to hear evidence may administer oath.
12.—Penalty for forging seal to documents.
13.—No person to be excluded for incapacity on account of crime. Any person in Court required to give evidence as if subpœnaed.
14.—Affirmation instead of oath in certain cases.
15.—Punishment for making false affirmation.
16.—Party objecting to be sworn may make declaration.
17.—How far a party may discredit his own witness.
18.—Proof of contradictory statements of adverse witnesses.
19.—Cross-examination as to previous statements in writing.
20.—Previous conviction of a witness may be proved.
21.—When proof by attesting witness necessary.
22.—Comparison of disputed writing.
23.—Examination of persons who refuse to make affidavit, and further proceedings.
24.—Proceedings upon order for examination.
25.—Registered copy, proof in certain cases.
26.—Evidence against estate of deceased person.
27.—Evidence against lunatic.


**1.** On the trial of any issue joined, or any matter or question, or on any enquiry arising in any suit, action or other proceeding, in any Court of Justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf any such suit, action or other proceeding may be brought or defended, or who may have any interest in the result thereof, and the husbands and wives of the parties thereto, and of the parties in whose behalf any such suit, action or other proceeding may be brought or instituted, or opposed or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding: Provided that the party so called to testify may be cross-examined by the opposite party under the rules applicable to the cross-examination of witnesses.

**2.** Nothing herein contained shall render any person who in any criminal proceeding, is charged with the commission of any indictable offence, competent and compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to criminate himself or herself, or shall in any such criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband; nor shall anything in this chapter contained

affect the laws now in force relating to the estates of idiots or lunatics, or the execution or attestation of last wills and testaments: Provided that nothing herein contained shall preclude a defendant or the husband or wife of the defendant from becoming a witness, should he or she think fit, in any summary proceeding of a criminal or other nature; and that no witness in any proceeding instituted in consequence of adultery, whether a party to the suit or not, or the husband or wife of such party, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness shall have already given evidence in the same proceeding in disproof of his or her alleged adultery.

**3.** No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.

**4.** The parties to any action for breach of promise of marriage shall be competent to give evidence in such action: Provided that no plaintiff in any action for breach of promise of marriage shall receive a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

**5.** A clergyman or priest shall not be compellable to give evidence as to any confession made to him in his professional character.

**6.** All proclamations, treaties, and other acts of state of any foreign state, or of any British colony, and all judgments, decrees, orders, and other judicial proceedings of any Court of Justice in Great Britain or Ireland, or in any foreign state, or in any British colony, and all affidavits, pleadings and other legal documents, filed or deposited in any such Court, may be proved in any Court of Justice, or before any person having, by law or by consent of parties, authority to hear, receive, and examine evidence either by examined copies or by copies authenticated as hereinafter mentioned, that is to say: if the document sought to be proved be a proclamation, treaty or other act of state, the authenticated copy, to be admissible in evidence, must purport to be sealed with the seal of the foreign state or British colony to which the original document belongs; and if the document sought to be proved be a judgment, decree, order, or other judicial proceeding of any British, foreign, or colonial Court, or any affidavit, pleading or other legal document, filed or deposited in any such Court, the authenticated copy, to be admissible in evidence, must purport either to be sealed with the seal of the British, foreign, or colonial Court to which the said original document belongs, or in the event of such Court having no seal, to be signed by the Judge, or if there be more than one Judge, by any one of the Judges of the said Court; and such Judge shall attach to his signature a statement in writing, on the said copy, that the Court whereof he is Judge has no seal; but if any of the aforesaid

authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where a seal is necessary, or of the signature or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

**7**. Every document which by any law now in force, or hereafter to be in force, is or shall be admissible in evidence of any particular in any British Court of Justice, without proof of the seal, or stamp, or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence, to the same extent and for the same purposes, in any Court of Justice in this colony, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, without proof of the seal or stamp or signature authenticating same, or of the judicial or official character of the person appearing to have signed the same.

**8**. Every register of a vessel kept under any of the acts relating to the registry of British vessels may be proved in any Court of Justice, or before any person having, by law or by consent of parties, authority to hear, receive and examine evidence, either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having charge of the original, and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same, upon the payment of the sum of twenty-five cents; and every such register and such copy of a register, and also every certificate of a registry granted under any of the acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence in any Court of Justice, or before any person having, by law or by consent of parties, authority to hear, receive and examine evidence, as *prima facie* proof of all matters contained and recited in such register, when the register or such copy thereof as aforesaid is produced and of all matters contained or recited in or endorsed on such certificate of registry when the certificate is produced.

**9**. Whenever any book, or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents proveable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice, or before any person now or hereafter having by law or consent of parties, authority to hear, receive, and examine evidence: Provided it be proved to be an examined copy or extract or provided it purport to be signed and certified, as a true copy or extract, by the officer to whose custody the original is entrusted; and which officer is hereby required to furnish such certified copy or extract to any person

applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding ten cents for every folio of ninety words.

**10.** If any officer or other person authorized or required by this chapter to furnish any certified copies or extracts, shall wilfully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of a misdemeanor, and be liable, upon conviction, to imprisonment for any term not exceeding eighteen months.

**11.** Any Court, Judge, Justice, officer, commission, arbitrator, or other person, now or hereafter having, by law or by consent of parties authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively.

**12.** If any person shall forge the seal, stamp, or signature of any document in this chapter mentioned or referred to, or shall tender in evidence any such document with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall, upon conviction, be liable to imprisonment for any term not exceeding three years, with hard labor: and when any such document shall have been admitted in evidence by virtue of this chapter, the Court or the person who shall have admitted the same may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded and kept in the custody of some officer of the Court, or other proper person for such period and subject to such conditions as to the said Court or other proper person shall seem meet; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence laid and charged to have been committed in any district or place in which the principal offender may be tried.

**13.** From and after the passing of this chapter, no person offered as a witness shall be excluded by reason of incapacity from crime from giving evidence according to the provisions of this chapter or otherwise; and any person present in Court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon subpœna issued by such Court or officer.

**14.** If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, the Court or Judge, or other presiding officer, or person qualified to take affidavits or depositions, may, upon being satisfied of the sincerity of such objection, permit such person, instead of being sworn, to make his or her solemn affirmation or declaration, in the words following—*videlicet:*

I, A. B, do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful, and I do also solemnly, sincerely, and truly affirm and declare, &c.

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

**15.** If any person making such solemn affirmation or declaration shall wilfully, falsely, and maliciously affirm or declare any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the laws and statutes of this colony are or may be enacted or provided against persons convicted of wilful and corrupt perjury

**16.** If any person called to give evidence in any Court of Justice, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding Judge is satisfied that the taking of an oath would have no binding effect upon his conscience, make the following promise and declaration :—

"I solemnly promise and declare that the evidence given by me to the Court shall be the truth, the whole truth, and nothing but the truth."

And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried and convicted for perjury, as if he had taken an oath.

**17.** A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the Judge prove adverse, contradict him by other evidence, or by leave of the Judge prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

**18.** If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the cause and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must ba asked whether or not he has made such statement.

**19.** A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but if it be intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of

the writing which are to be used for the purpose of so contradicting him: Provided that it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it, for the purposes of the trial, as he shall think fit.

**20.** A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either deny the fact or refuse to answer, the opposite party may prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction of such offence, purporting to be signed by the Clerk of the Court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of one dollar, and no more, shall be demanded or taken,) shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have made the same.

**21.** It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission, or otherwise, as if there had been no attesting witness thereto.

**22.** Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine, shall be permitted to be made by witnesses, and the evidence of witnesses respecting the same may be submitted to the Court and jury as evidence of the genuineness or otherwise of the writing in dispute.

**23.** Any party to any civil action, or other civil proceeding, in any of the Superior Courts, requiring the affidavit of a person who refuses to make an affidavit, may apply, by summons, for an order to such person to appear and be examined upon oath before a Judge or Master to whom it may be most convenient to refer such examination as to the matters concerning which he has refused to make an affidavit; and the Judge may, if he think fit, make such order for the attendance of such person before the person therein appointed to take such examination, for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, and may therein impose such terms, as to such examination and the costs of the application and proceedings thereon, as he shall think just.

**24.** Such order shall be proceeded upon in like manner as an order made under Order XXXIII., Rule 4, of the "Rules of the Supreme Court, 1889," and the examination thereon shall be conducted, and the depositions taken down and returned, as nearly as may be in the mode now used on *viva voce* examinations.

**25**. Where a deed or document shall have been duly registered in pursuance of the laws of this colony, and the same shall, on the trial of any cause, suit or proceeding, be proved to be lost, such registry, or a certified copy thereof by the registrar, shall, without further proof, be admitted in evidence in all cases where the original if produced would be receivable.

**26**. In any action or proceeding, by or against the representatives of a deceased person, an opposite or interested party to the action shall not obtain a verdict, judgment or decree therein, on his own evidence in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence.

**27**. In any action or proceeding by or against a person found by inquisition to be of unsound mind, or being an inmate of a lunatic asylum, an opposite or interested party shall not obtain a verdict, judgment, or decree therein, on his own evidence, unless such evidence is corroborated by some other material evidence.

# CHAPTER 58.

## Of Distress and Replevin.


SECTION
1.—Upon distress for rent, particulars to be furnished.
2.—Articles exempt from distraint.
3.—Sheriffs and bailiffs authorized to make replevies.
4.—Party replevying to give bond.
5.—Bond may be assigned to party distraining.
6.—Party replevying to proceed with action.
7.—Application of chapter. Schedules.


**1** In all cases of distress for rent, the person making any such distress shall deliver to the person in possession of the premises, for the rent of which such distress shall be made, or, in case there shall not be any person found in possession, shall affix upon some conspicuous part of such premises a particular in writing of the rent demanded, specifying the amount thereof, the time when the same accrued, and the person by whom or by whose authority such distress is made.

**2**. The working tools and implements of trade of any person, his fishing skiff or punt, the necessary cooking apparatus, the bedding and wearing apparel of himself and his family, shall not in any case be liable to be taken for any distraint for rent.

**3**. The sheriffs of the several districts of this Island, as well as their sworn bailiffs to be appointed by them at convenient places within their

respective districts, and for whom and for whose acts the sheriffs shall be respectively responsible, are hereby authorized to make replevies and deliverances of distress in manner hereinafter directed; and the said sheriffs shall from time to time notify and publish in the Newfoundland *Royal Gazette* the names and places of residence of all such sworn bailiffs, who shall have authority to make such replevies and deliverances as aforesaid in the sheriff's name, and in the same manner as the sheriff may and ought to do.

**4.** In all cases of distress for rent and otherwise, the person whose goods shall be distrained, and who shall be desirous of replevying the same or any part thereof, shall enter into a bond with the sheriff of the district, with one or more sufficient sureties, to the satisfaction of the sheriff or the bailiff by whom the said bond shall be taken, which bond shall be in the form set forth in the schedule A to this chapter annexed; and the penalty of such bond shall be a sum sufficient to cover the value of the cattle or goods distrained, if taken for any other cause than for rent, and if taken for rent, then in a sum double the value of the cattle or goods distrained; and upon the execution of such bond the said sheriff, or such bailiff as aforesaid in the name of the sheriff, shall forthwith issue his warrant to replevy the cattle or goods so distrained as aforesaid, which warrant shall be in the form C in the schedule to this chapter annexed; and such warrant may be executed at any time before the sale of any such cattle or goods so distrained, and may by law be sold in pursuance of any such distress.

**5.** The sheriff or bailiff taking any replevin bond shall, at the request and costs of the person by whom the distraint has been made, assign such bond to the person aforesaid, by endorsing the same and attesting it under his hand and seal, in the presence of two or more credible witnesses, in the form set forth in the schedule B to this chapter annexed; and if the bond so taken and assigned be forfeited, the person making distraint may bring an action and recover thereon in his own name; and the Court may, by rule, give such relief to the parties upon such bond as may be agreeable to justice; and such rule shall have the nature and effect of a defeazance of such bond.

**6.** The party obtaining a replevy of cattle or other goods so to be distrained as aforesaid, shall, on or before the first day of the then next term or sittings of the Court, to be mentioned in such warrant of replevin, or, if the Court be sitting, then within four days after the execution of such warrant of replevin, proceed with the action of replevin pursuant to the conditions of the bond to the sheriff, as above provided.

**7.** This chapter shall extend to all cases in which replevin will lie,

## SCHEDULE A.

### Replevin Bond.

Know all men by these presents, that we, A. B, of , G. A., of , and T. R., of , are jointly and severally held and firmly bound to G. H., Esquire, Sheriff of the district, in the sum of dollars (a sufficient sum to cover the value of the cattle or goods distrained, if taken damage feasant, or, if for rent, then double the value of the cattle or goods taken), to be paid to the Sheriff or his certain attorney, executors, administrators or assigns; for which payment to be well and truly made, we bind ourselves and each and every of us, and our and each and every of our executors and administrators, firmly by these presents. Sealed with our seals.

Dated this day of , A. D.

The condition of this obligation is such, that if the above bounden A. B. do appear at the next term or sittings of the Supreme Court, which shall next sit within the district , to be holden at , for the said district (or if it be in term time, then say, "in this present term of the Court at ,")—and do then and there prosecute his suit with effect and without delay against C. D. for the taking and unjustly detaining of his cattle, goods and chattels, to wit, (state the cattle or goods distrained), and do make return of the said cattle, goods and chattels, if a return thereof shall be adjudged, then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.

A. B, (L. S.)

G. A, (L. S.)

T. R, (L. S.)

## SCHEDULE B.

### Assignment of Replevin Bond to be endorsed on Bond.

Know all men by these presents, that I, G H, Esquire, Sheriff of the district of Newfoundland, have, at the request of the above-named C. D., the avowant (or person making cognizance), assigned over to him, the said C. D, this replevin bond, according to the statute in such case made and provided.

Dated, &c,

G. H.

## SCHEDULE C.

### Warrant of Replevin.

District, }
To wit: }

G. H., Esquire, Sheriff of the district of Newfoundland, to , and , and to every of them, jointly and severally, greeting:

Whereas A. B. hath found me sufficient security, as well for prosecuting his suit with effect against C. D. for taking and unjustly detaining his cattle, goods and chattels, to wit, (set out the cattle or goods), which the said C. D. hath taken and unjustly detains, as it is said: therefore, on behalf of the said A. B, I command you, jointly and severally, that without delay, you replevy and cause to be delivered to the said A. B, his said cattle, goods and chattels, and that you immediately summon C. D to appear at the next term of the Supreme Court to be holden at in and for the said district (or as the case may be) to answer the said A. B. in the plea aforesaid; and in what manner you shall have executed the said precept certify to me at the time and place aforesaid; under the peril attending the neglect thereof.

Given under my seal this }
day of , A. D. 18 . }

G. H, *Sheriff*, (L. S.)

(Or if granted by a bailiff, say L. H., one of the bailiffs of the said Sheriff, according to the form of the statute.)

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# CHAPTER 59.

## Of Ejectment as against Tenants, and for non-payment of Rent.


Section
1.—Tenant to give notice to landlord when action taken.
2.—Proceedings by landlord for possession for non-payment of rent. Proviso as to mortgages.
3.—Lessee not to have injunction except on payment of rent and costs.
4.—Tenant paying rent and costs proceedings to cease.
5.—Saving of other remedies.
6.—Action for possession by mortgagee.
7.—Proviso for certain cases.
8.—Jurisdiction of Court and Judges.


**1.** Every tenant to whom any writ for the recovery of possession of the property or tenement of which he is a tenant shall be delivered or to

whose knowledge it shall come, shall forthwith give notice thereof to his landland, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises demised or holden in the possession of such tenant to the person of whom he holds, to be recovered by action in any Court having jurisdiction for the amount.

**2.** In all cases between landlord and tenant, as often as it shall happen that one half-year's rent shall be in arrear, and the landlord or lessor to whom the same is due hath right by law to re-enter for the non-payment thereof, such landlord or lessor may without any formal demand or re-entry serve a writ in an action for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in case such action shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements and hereditaments comprised in such writ, and such affixing shall be legal service thereof, which service or affixing such writ shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant for non-appearance, if it be made to appear to the Court by affidavit, or be proved upon the trial in case the defendant appears, that a half-year's rent was due before the writ was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor had power to re-enter, then and in every such case the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and in case the lessee or his assignee, or other person claiming or deriving under the said lease, shall permit and suffer judgment to be had and recovered on such trial, and execution to be executed thereon without paying the rent and arrears together with full costs, and without proceeding for relief in equity within six months after execution executed, then and in such case the said lessee, his assignee, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, and such landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if in such action a verdict shall pass for the defendant, or the claimant shall be non-suited therein, then and in every such case such defendant shall recover his costs: Provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do within six months after judgment obtained and execution executed, pay all rent in arrear and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which, on the part and behalf of the first lessee, are or ought to be performed.

**3.** In case the said lessee, his assignee, or other person claiming any right, title, or interest in law or equity, of, in, or to the said lease, shall within the time aforesaid proceed for relief in any Court of equity, such

person shall not have or continue any injunction against the proceedings at law in such action unless he does or shall within ten days next after a full and perfect answer shall be made by the claimant in such action, bring into Court and lodge with the proper officer, such sum of money as the lessor or landlord shall in his answer swear to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the Court: and in case such proceedings for relief in equity shall be taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable for so much and no more as he shall really and *bona fide*, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof; and if what shall be so made by the lessor or landlord so happen to be less than the rent reserved on the said lease, then the said lessee or his assignee, before he shall be restored to his possession, shall pay such lessor or landlord what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

**4.** If the tenant or his assignee at any time before the trial in such action pay or tender to the lessor or landlord, his executors or administrators, or his or their attorney in that cause, or pay into Court all the rent and arrears, together with the costs, then and in such case all further proceedings in the action shall cease and be discontinued; and if such lessee, his executors, administrators, or assigns, shall, upon such proceedings as aforesaid, be relieved in equity, he and they shall have, hold, and enjoy the demised lands according to the lease thereof made, without any new lease.

**5.** Nothing herein contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for, otherwise than hereinbefore expressly enacted.

**6.** Where an action shall be brought by any mortgagee, his executors, administrators, or assigns, for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit shall be then depending for or touching the foreclosing or redeeming of such mortgaged lands, tenements, or hereditaments, if the person having right to redeem such mortgaged lands, tenements, or hereditaments, and who shall appear and become defendant in such action shall at any time pending such action pay unto such mortgagee, or, in case of his refusal to receive the same, shall bring into Court, the principal money and interest due on such mortgage, and all such costs as have been expended in any suit at law or in equity upon such mortgage, such money for principal, interest and costs, to be ascertained and computed by the Court, or by the proper officer thereof to be appointed for that purpose, the money so paid to such mortgagee or brought into Court shall be deemed to be in full satisfaction and

discharge of such mortgage, and the Court shall discharge every such mortgagor or defendant of and from the same accordingly: and shall by rule compel such mortgagee, at the costs and charges of such mortgagor, to assign, surrender, or re-convey such mortgaged lands, tenements and hereditaments, and such estate and interest as such mortgagee has therein, and to deliver up all deeds, evidences and writings in his custody relating to the title of such mortgaged lands, tenements and hereditaments, unto such mortgagor who shall have paid or brought such money into Court, his executors or administrators, or to such other person as he or they shall for that purpose appoint.

**7**. Nothing herein contained shall extend to any case where the person against whom the redemption is or shall be prayed, shall (by writing under his hand or the hand of his attorney, agent or solicitor, to be delivered, before the money shall be brought into Court, to the attorney or solicitor for the other side) insist either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other and different sums than what appear on the face of the mortgage, or shall be admitted on the other side; or to any case where the right to redemption to the mortgage lands and premises in question, in any cause or suit, shall be controverted or questioned by or between different defendants in the same cause or suit; or shall be any prejudice to any subsequent mortgage or any subsequent incumbrance.

**8**. The Supreme Court and the Judges thereof respectively shall exercise over the proceedings the like jurisdiction as heretofore exercised in the action of ejectment, so as to insure a trial of the title, and of actual ouster, when necessary only, and for all other purposes for which such jurisdiction may at present be exercised.

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# CHAPTER 60

## Of the recovery of possession of Tenements, in certain cases.


SECTION
1.—Proceedings before Justice of the Peace.
2.—Service of notice of application.
3.—Appeal to Supreme Court.
4.—Bond to be approved.
5.—Non-liability of Justice or constable.
6.—Forcible entry and detainer.
7.—Fees.
8.—Interpretation clause. Schedule.


**1**. Whenever the term or interest of the tenant of any house or land, held by him either at will or for a term of years, either without being liable to the payment of rent or at a rent not exceeding one hundred dollars annually, shall have been duly determined, or whenever such

tenant shall be a half year in arrear in payment of his rent, and there shall be no sufficient distress upon the premises, the said rent not being for ground on which a house shall have been built by the tenant, and such tenant or other person who shall occupy any part of the premises shall neglect or refuse to quit and deliver up possession of the same, the landlord of the said premises or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served (in the manner hereinafter mentioned) with a written notice in the form set forth in the schedule to this chapter, signed by the landlord or his agent, of his intention to proceed to recover possession under the authority of this chapter; and if the tenant or occupier shall not thereupon appear at the time and place appointed in such notice, and show, to the satisfaction of a stipendiary Justice of the Peace, as hereinafter mentioned, reasonable cause why possession should not be given under the provisions of this chapter, and shall still neglect or refuse to deliver up possession of the premises or any part thereof of which he is then in possession to the said landlord or agent, such landlord or agent may give to such stipendiary Justice of the Peace proof of the holding, and of the end or determination of the tenancy, or of the rent being in arrear and unpaid as aforesaid, and no sufficient distress on the premises to satisfy the same; and upon proof of the service of the notice, and of the neglect or refusal of the tenant or occupier to quit, such stipendiary Justice of the Peace shall issue a warrant, directed to the constables of the district, commanding them within a period to be therein named, not less than five nor more than fifteen days from the date of such warrant, to enter (by force if needful) into the premises and give possession of the same to the landlord or agent: Provided that in the case of a tenant sought to be ejected for non-payment of rent as aforesaid, the Justice may vacate his warrant if the rent be paid within the period to be named therein as aforesaid, together with the costs of the landlord's proceedings: Provided that entry upon any such warrant shall not be made at any time except between the hours of nine in the morning and four in the afternoon; and also, that nothing herein contained shall protect any person on whose application and to whom any warrant shall be granted from any action which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession, where such person had not, at the time of granting the same, lawful right to the possession of the said premises.

2. Notice of application intended to be made under this chapter may be served either personally or by leaving the same with some person being in and apparently residing at the place of abode of the person so holding over or being in arrear as aforesaid; and the person serving the same shall read over the same to the person served, or with whom the same shall be left as aforesaid, and explain the purport and intent thereof: Provided, that if the person so holding over or being in arrear as aforesaid cannot be found, and the place of abode of such person shall either not be known or admission thereto cannot be obtained for serving such notice, the posting up of the said notice on some conspicuous part of the premises shall be deemed to be good service upon such person.

**3** Any person who shall consider himself aggrieved by the decision of any Justice in pursuance of this chapter may appeal from such decision to the Supreme Court at the first sittings thereafter, on entering into a bond, in the form set forth in the schedule to this chapter annexed, with two sureties, as hereinafter mentioned; and the decision of such Court as last aforesaid shall be final: Provided that the penal sum of such bond shall not exceed two hundred dollars.

**4.** Every such bond as aforesaid shall be made to the landlord or his agent, and the same, and said sureties, shall be approved of in writing on said bond by said Justice; and if the bond so taken be forfeited, or if upon the hearing of such appeal for the securing of which such bond was given the Court before whom the same shall be heard shall not certify that the condition of the bond hath been fulfilled, the party to whom the same shall have been made, as aforesaid, may bring an action and recover thereon: Provided, that the Court before whom such an appeal shall be heard may, by rule of Court, give such relief to the parties upon such bond as may be agreeable to justice; and such rule shall have the nature and effect of a defeasance of such bond, and such Court may make such order as to the costs as may appear reasonable.

**5.** No action or prosecution shall be brought against the Justice by whom such warrant shall have been issued, or against any constable or peace officer by whom such warrant shall have been executed, for issuing such warrant or executing the same by reason that the person on whose application the same was granted had not lawful right to the possession of the premises.

**6.** In cases of wrongful and forcible entry and detainer of lands or tenements, any stipendiary Justice within whose jurisdiction the land or premises lie, on complaint on oath being made, shall summon such person so in possession to answer such complaint, and, if he shall adjudge in favour of the complainant, punish the defendant, if he shall see fit, by fine not exceeding twenty dollars and costs; and in case of non-payment of such fine and costs within a time to be appointed by such Justice, may arrest and imprison the defendant for any term not exceeding one month; and also issue his warrant to take possession, as in other cases provided for by this chapter. The provisions of this section shall not apply where the party complained of, or the person under whom he claims, has been in quiet possession for one year before the making of the complaint.

**7.** The following scale of fees shall be paid in the first instance by the landlord or agent to the Clerk of the Peace and constables for proceeding under this chapter, and may be levied by execution on the goods and chattels of the tenant or the person wrongfully holding over:

| | |
|---|---|
| Notice and service ... ... ... ... ... | $1.00 |
| Complaint ... ... ... ... .. ... | 50 |
| Hearing ... ... ... ... ... ... | 25 |

| | |
|---|---|
| Warrant to take possession... ... ... ... | ... $1 50 |
| Mileage, per mile... ... ... ... ... | ... 25 |

**8.** In construing this chapter, the word "premises" shall signify lands and houses and tenements, and the word "agent" shall signify any person usually employed by the landlord in the letting of the premises, or in the collection of the rents, or specially authorized to act in the matter.

## SCHEDULE.

### Notice of Landlord to Tenant.

I, (owner, or agent to the owner, as the case may be), give you notice that unless peaceable possession of the (shortly describing the premises), situate which was held (of me or of as the case may be), which expired or was determined on and which is now held over and detained from (or for which six months rent is in arrear and unpaid, and no sufficient distress to satisfy the same,) be given to on or before the expiration of seven days from the service of this notice, unless the rent so in arrear and unpaid as aforesaid be paid, I shall on the day of apply to one of Her Majesty's stipendiary Justices of the Peace, for the district to issue his warrant directing the constables of the said district to enter and take possession of the said and to eject any person therefrom.

(Signed),

A. B.
(Owner or agent.)

To Mr. C. D.

(The party in possession.)

### Complaint before Justice of the Peace.

The complaint of (owner or agent), made before me, one of Her Majesty's stipendiary Justices of the Peace, who saith that the said did let to (premises), for under a rent of and the said tenancy was determined on the (or that six months rent was in arrear and unpaid, and no sufficient distress to be found on the premises to satisfy the same), and that on the the said did serve on (the tenant overholding) a notice

in writing of his intention to apply to recover possession, a duplicate of which notice is hereto annexed (describing the mode of service); and that notwithstanding the said notice, the said refused (or neglected) to deliver up possession of the said premises, and still detains the same.

(Signed),

A. B.

Taken before me on oath, at ,
this day of , A. D.

E. F., *J. P.*

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WARRANT TO TAKE POSSESSION.

Whereas (set forth complaint), I, one of Her Majesty's stipendiary Justices of the district of do authorize and command you, on any day within days from the date hereof, to enter, by force, if needful, and with or without the aid of (owner or agent), or other person, into and upon (the premises), and to eject thereout any person, and of the said full and peaceable possession to deliver to the said (the owner or agent).

Given under my hand and seal this day of , A. D. 18 .

E. F., *J. P.* [L. S.]

To and all other constables for the district of

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COMPLAINT ON FORCIBLE ENTRY.

The complaint of (owner or agent), made before me , one of Her Majesty's stipendiary Justices of the Peace, who saith that within one year, has taken wrongful and forcible possession of premises, belonging to and still holds possession of the same, and refuses to deliver up the said premises to

Sworn, &c.

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SUMMONS.

Summon to answer who complains that has taken wrongful and forcible possession of (premises) belonging to the said and still refuses to deliver up the same to and to show cause why he should not be fined or imprisoned thereupon according to law.

FORM OF BOND ON APPEAL.

Know all men by these presents, that we, A. B, C. D., and E. F. of are held and firmly bound unto G. H, of in the penal sum of dollars, to pay to the said G. H., his executors, administrators or assigns, and for which payment well and truly to be made we jointly and severally bind ourselves, our executors and administrators, by these presents.

Sealed with our seals, and dated at this day of , A. D. 18 .

The condition of the within written recognizance is such that if the said A. B. shall, in the term of the Supreme Court of this colony, now next following, to be held (at St. John's or on the circuit, as the case may be), enter and prosecute an appeal against a certain judgment bearing date the day of and made by one of Her Majesty's stipendiary Justices of the Peace, in a proceeding for summary eviction under the law providing for the recovery of tenements after due determination of the tenancy, and in the case instituted by the said G. H.; and further, that if the said A. B. shall abide by and duly perform the order of the Court to be made upon the trial of such appeal, then the said recognizance to be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered
in the presence of

[Seal.]

[Seal.]

[Seal.]

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# CHAPTER 61.

## Of the trial of questions relating to Crown Grants, &c.

SECTION
1.—Interpretation of term "Crown grant."
2.—Trial of questions relating to Crown grants to be had on petition to Supreme Court.
3.—Service of copy of petition.
4.—All persons interested to be parties to proceedings.
5.—Proceedings to be as on equity side of Court.
6.—Court to make decree as in other cases: Proviso as to costs.
7.—Appeal.
8.—Saving clause.

1. The term "Crown grant" in this chapter shall include any grant, lease, or license of occupation, absolute, limited, or conditional, of, or re-

lating to any of the Crown or public lands of the colony, or any license to search, lease or grant of any mining or other rights or interest of or in any lands in this colony, granted by or issuing from Her Majesty, the Government, or any department thereof.

**2.** Any person having or claiming to have an interest in any lands or tenements in this colony, or any rights or privileges arising therefrom, or appurtenant thereto, which are, or are claimed to be held, conveyed, or otherwise affected by any Crown grant, who shall claim that such Crown grant is void or voidable, or has been or ought to be forfeited, or that any defect, irregularity, omission, or error of any kind has occurred in or relating to such grant, or the right or title of the Crown to make such grant, or the right or claims of the grantee or holder of such grant to obtain or to retain the same, or that any other act, matter, or thing has been done or suffered, whereby or by reason whereof such grant, or any part, provision, or condition thereof, should be set aside, declared void, struck out, expunged, altered or amended, or any clause, condition or proviso, should be added, or the name of any grantee or other party thereto added, struck out, or altered, or who shall claim any other relief, legal or equitable, against or in relation to such grant, may prefer a petition to the Supreme Court, setting forth as briefly as possible the nature of his claim, the facts or circumstances or other grounds upon which he makes the said claim, or prays the said relief, and as nearly as may be the nature of the relief which he prays. And such petition shall be verified by affidavit.

**3.** A copy of said petition shall in all cases be served upon the Attorney General, or in his absence, the Solicitor General, on behalf of the Government.

**4.** All persons whose interests are, or may be, or are sought to be, in any way affected by the order or decree of the Court, or other relief sought for by the said petition, shall be made parties to the proceedings under the said petition, or be served with a copy thereof in the same manner, and subject to the same directions and consequences as in a suit on the equity side of the Supreme Court, in relation to the subject-matter of the said petition.

**5.** The proceedings upon such petition shall be in all respects as nearly as may be in accordance with the practice on the equity side of the Supreme Court.

**6.** The Supreme Court and the Judges thereof shall, at any stage of the proceedings, under such petition, or upon the hearing of such petition, have the power to make, pronounce, and grant such decree, order or judgment, or to grant such other relief, legal or equitable, in relation to the subject-matter of said petition as might be given, pronounced or granted in, under, or by virtue of any other suit, action or other proceeding in relation to any deed, conveyance, contract or document, other than a

Crown grant; and to make such order as to costs, as to the Court or Judge shall seem meet, which costs shall be taxed in accordance with the scale on the equity side of the Supreme Court: Provided that in no case shall the Crown or Government be entitled to recover or be made liable to the payment of costs.

7. Any party to any proceeding under this chapter may appeal to Her Majesty in Council in the same manner as in ordinary cases between party and party under the Royal Charter.

8. The provisions of this chapter shall not be held to take away or affect any action, suit, right or remedy, which any persons would, before the passing of this chapter, have been entitled to have or maintain

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# CHAPTER 62.

## Of the recovery of penalties upon the forfeiture of certain Recognizances.

SECTION
1.—Rule *nisi* to declare recognizances forfeited, and further proceedings.
2.—Justice may return forfeited recognizance to Supreme Court.
SECTION
3.—Court may submit question to jury.
4.—Order for payment may be enforced by attachment.
Schedule.

1. Whenever any recognizance returned into or given to the Supreme Court shall become forfeited by breach of the condition thereof, the Court may by a rule *nisi*, to be made upon sufficient affidavits shewing the execution and forfeiture of such recognizance, and to be served upon such of the parties executing the same as shall be within the jurisdiction of the Court, require such parties to show cause why the said recognizance should not be declared to be forfeited, and the amount of the penalty thereof paid by them; and thereupon, after hearing the parties to such rule, or such of them as may appear upon the same, or in default of appearance, make an order pronouncing such recognizance forfeited and directing the payment into Court of the penalty thereof by the parties liable, or discharging such rule *nisi*, as may be lawful in that behalf: provided that the Court, upon sufficient special cause, may if it shall see fit to do so, lessen or altogether remit the amount of such penalty.

2 When any recognizance for the doing or not doing of any matter or thing, other than the appearance of any person before the Supreme Court aforesaid, and made to any Justice or Court of Session, shall become forfeited, such Justice, or in case of his death or incapacity, any

other Justice of the district or the Clerk of Peace or the Court of Session, as the case may be, may make return of such recognizance and of the forfeiture thereof under his hand and seal, in the form substantially in the schedule annexed, to the Supreme Court, and thereupon the like proceedings shall be had for declaring the forfeiture of such recognizance and for the recovering of the penalty as are hereinbefore directed for other cases.

**3.** The Court in which any such rule *nisi* shall be pending may, in any case wherein the recognizance is conditioned for the performance of any act not to be done in or before or to such Court, should they consider it expedient for the ends of justice and the discovery of the truth, submit any question in controversy upon such rule *nisi* to the determination of a jury, in like manner as if such question came before the Court upon a special case; and after such determination such further order shall be made by the Court as hereinbefore directed.

**4.** Every such order for the payment in whole or in part of any such penalty shall be enforced by the Court making the same, by process of contempt and by attachment of the property of the party liable in that behalf. The form of such process and attachment shall be as prescribed in the schedule annexed, and the amount levied thereunder shall be paid over by the Court to the Receiver General for the use of the colony.

## SCHEDULE.

### Return of Recognizance by Justice of the Peace.

I, G. H., of , one of Her Majesty's Justices of the Peace for the district of Newfoundland, do hereby certify and return unto the Honorable the Supreme Court that the recognizance heretofore annexed, marked by me, was on or about the taken before and that the same has become forfeited by breach of the condition thereof by X. Y., therein named.

Given under my hand and seal at this day of 18

(Signed), G. H. [L. S.]

[If the return be made by any other than the Justice before whom the recognizance was entered into, or the breach of condition occurred, or was shewn, let the words "all which is satisfactorily proven to me," be added after the word "named."]

FORM OF ATTACHMENT OF THE PERSON FOR CONTEMPT OF ORDER OF COURT.

[L. S.] Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c.

To the Sheriff of , greeting:

We command you that you arrest A. B., of , &c., and him commit to prison, there to remain until he shall have paid into the Supreme Court the sum of in obedience to the order of our said Court, dated , or until he be discharged in due course of law.

Witness the Honorable Justice of our Supreme Court of Newfoundland, at , this day of (date of issuing).

By the Court,

M. W. W., *C. C. & R.*

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FORM OF ATTACHMENT OF PROPERTY.

[L. S.] Victoria, by the Grace of God &c.

To the Sheriff of , greeting:

We command you that of the property of A. B., of , &c., you cause to be made dollars, which the said A. B. was, by order of our Supreme Court, dated , ordered to pay into our said Court; and the amount levied you pay over to the Chief Clerk of our said Court, to abide the order of the said Court herein.

Witness the Honorable Justice of our Supreme Court of Newfoundland, at , this day of (date of issuing).

By the Court,

M. W., W., *C. C. & R.*

# TITLE VII.

## OF THE CRIMINAL LAW.

## CHAPTER 63.

### Of the application of the Criminal law of England, and certain local enactments.


SECTION
1.—English criminal law to apply to this colony.
2.—Application of penalties.
3.—Appellate jurisdiction of Supreme Court.
4.—Appeals to Quarter Sessions under Imperial Acts to be had before Supreme Court.
5.—Certain Imperial Statutes to be in force.
6.—Imperial Statutes relating to jurisdiction, power, practice, &c., to apply.
SECTION
7.—Local laws to be regarded as cumulative.
8.—When penal servitude imposed by law of England, imprisonment for like term to apply.
9.—Receiving stolen goods, &c., a misdemeanour.
10.—Power of Magistrates and Justices to order distress and sale of goods in certain cases.


**1.** In all cases not provided for by local enactment the law of England, as to crimes and offences, shall be the law of this Colony, so far as the same can be applied: subject to such amendments, alterations, and further enactments of the Imperial Parliament as may hereafter be made, and which shall, after twelve months from the passing thereof, respectively be the law of this Colony: Provided, that between the time of the passing of any law and its coming into force in this Colony, the law as it previously stood shall continue to be in force therein.

**2.** All pecuniary penalties imposed by any law of England which shall, according to the provisions of this chapter, be in force in this Colony, shall be adjudged to be distributed in the following manner, namely: such part to the informer as the law of England may provide, and the remainder, or the whole where no part shall go to the informer, to be paid into the public treasury for the use of the Colony.

**3.** Where by any act of the Imperial Parliament any criminal jurisdiction, or authority by way of appeal, adjudication of reserved points, removal, or otherwise, is or shall be vested in the Supreme Court of Judicature of England or any division thereof, or the Justices thereof, or any number of such Justices, or in any other superior Court or Justices thereof, such jurisdiction or authority shall be exercised by the Supreme Court of this Colony, or the Judges thereof, as in the case of appeals provided by the fourth section of the fiftieth chapter of these consolidated statutes relating to the Supreme Court and the Judges thereof.

**4.** Where by any Act of the Parliament of Great Britain and Ireland, concerning the Criminal Law, which Act is or may at any time be applied to this Colony, appeals to Courts of General or Quarter Sessions of the Peace are provided, such appeals and other proceedings to be had by transfer or otherwise to or before such Courts, shall be had to and before

the Supreme Court of this Colony, and shall at the instance of any party to the appeal, or other proceeding, or at the instance of any other person having a right to move therein, be entertained and enforced either in term or vacation in St. John's or elsewhere on Circuit as may be most convenient.

**5.** The act of the Imperial Parliament, passed in the eleventh and twelfth years of the reign of her present Majesty, (chapter forty-two,) entitled "An act to facilitate the performance of the duties of Justices of the Peace out of sessions, within England and Wales, with respect to persons charged with indictable offences"; and another act of the same year and reign, (chapter forty-three), entitled "An act to facilitate the performance of the duties of Justices of the Peace out of sessions, within England and Wales, with respect to summary convictions and orders": also an act passed in the eleventh and twelfth years of the reign of her present Majesty, (chapter forty-four), entitled "An act to protect Justices of the Peace from vexatious actions for acts done by them in execution of their office"; also an act passed in the twentieth and twenty-first years of the reign aforesaid, (chapter forty-three), entitled "An act to improve the administration of the law, so far as respects summary proceedings before Justices of the Peace"; also, an act passed in the twenty-eighth and twenty-ninth years of the reign aforesaid, (chapter one hundred and twenty-seven), entitled "An act to amend the law relating to small penalties"; shall as heretofore extend to and be the law of this Colony so far as the same can be applied.

**6.** In all cases in which statutes of the Imperial Parliament of Great Britain, in amendment or alteration of the criminal law in England, are or shall hereafter be held to apply to this Colony, all statutes now or hereafter to be passed relating to jurisdiction, power, practice, and protection, having reference to the operation or execution of such statutes, shall be held also to extend to and be the law of this Colony after twelve months from the passing of the same, so far as the same can be applied

**7.** Where any mode of practice is or hereafter may be prescribed by a local law, which may or can be applied for the purpose of carrying out the provisions of any Imperial act which shall be held to extend as aforesaid to this Colony, such mode of practice may be used, and shall be regarded as a cumulative remedy.

**8.** In all cases where by the law of England offences are or shall be punishable with penal servitude, the Supreme Court of this Colony may in its discretion sentence offenders convicted before such Court of the like offences, to imprisonment with or without hard labour, and with or without any other punishment to which such offenders may by law be liable for any term not exceeding the longest term of penal servitude provided for the like offences by the law of England.

**9.** Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, em-

bezzling or otherwise disposing whereof, shall amount to a felony either at common law or by virtue of any statute in force in this Colony, knowing the same to be feloniously stolen, taken, extorted, obtained, embezzled, or disposed of, may be indicted and convicted of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to such punishment as now is or may be provided by the laws of this Colony for the offences aforesaid.

**10.** In all cases where the statute by virtue of which a conviction for a penalty or compensation, or an order for the payment of money, is made by a Magistrate or Justice of the Peace, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith or within a certain time therein mentioned, or to be mentioned in such conviction or order, the defendant shall be imprisoned for a certain time, unless such penalty, compensation or sum shall be sooner paid, in any such case if the defendant do not pay the same together with costs, if awarded forthwith or at the time specified in such conviction or order for the payment of the same, the convicting Justice or Magistrate may, at his option, issue a warrant of distress and sale of the goods and chattels of the defendant, for the recovery of the amount of such penalty, compensation or sum of money, and costs. In case it shall be returned to such warrant of distress that no sufficient goods of the defendant can be found, the judgment or order for the imprisonment of the defendant shall be carried into effect.

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# CHAPTER 64.

## Of the Criminal Jurisdiction, Power and Procedure of certain Courts of Quarter Sessions.

SECTION
1.—Jurisdiction of Courts of Quarter Sessions for Central District and Harbor Grace in cases of larceny, receiving stolen goods, and false pretences, where property does not exceed $20 in value.
2.—Court of Quarter Sessions may be held by a Police Magistrate, alone or with one or more Justices; no formal adjournment necessary.
3.—Jurisdiction to try summarily assaults and batteries, cutting and wounding, &c.
4.—Courts to forward complaint to Attorney General or Solicitor General, for his consideration.
5.—Courts may impose imprisonment for six months.
SECTION
6.—Courts may, in addition to or in lieu of punishment, fine to the extent of $100.
7.—Courts may adjudge costs.
8.—Courts may levy distress for penalties.
9.—Fines may be apportioned.
10.—Conviction to have effect of conviction upon indictment.
11.—No conviction to be quashed for want of form.
12.—Where offence not proved, charge to be dismissed and certificate of dismissal given to defendant.
13.—Certificate and payment to be a bar to further civil proceedings.
14.—Persons found committing offences may be apprehended without warrant.

**1.** The Courts of General Quarter Sessions of the Peace for the Central District, and for the district of Harbor Grace, shall have full

power, jurisdiction and authority to try and determine in a summary manner without a jury, all cases of larceny, of receiving stolen goods, and of obtaining or attempting to obtain any chattel, money or valuable security under false pretences where the value of the property stolen, or received, or obtained, or attempted to be obtained, does not exceed twenty dollars, and in such case to any amount where the party charged consents.

**2.** The said Court of Quarter Sessions may be held by a Police Magistrate, sitting alone, or with one or more Justices of the Peace, and may be holden whenever business may require, without formal adjournment or proclamation, except on the opening and closing of the Court at the commencement of each quarter.

**3.** The said Courts shall also have power to try and determine in a summary manner and without a jury, all cases of assault and battery, cutting and wounding, grievous bodily injury, with or without weapon, also, attempts to commit injury to the person, except attempts to commit murder or rape.

**4.** It shall be the duty of the said Courts of General Quarter Sessions before proceeding to the trial of any such case as mentioned in the next preceding section to forward to the Attorney General or in his absence to the Solicitor General, a copy of the complaint upon oath for his consideration and determination; and if the said Attorney General, or in his absence the Solicitor General, be of opinion that from any cause the charge is a fit subject for prosecution by indictment rather than to be disposed of summarily, the said Courts of Quarter Sessions shall deal with the case in all respects as if this chapter had not been passed.

**5.** In all cases mentioned in the foregoing sections the said Courts shall have the power to sentence all persons convicted of any of said offences, to a term of imprisonment not exceeding six calendar months.

**6.** In all cases mentioned in the third section of this chapter, the said Courts may in addition to or in lieu of any punishment by this chapter authorized, fine the offender to an amount not exceeding one hundred dollars, and require him to enter into his own recognizance and to find sureties for the keeping of the peace and being of good behaviour, or either: and in default of payment or finding such sureties to imprisonment for any period not exceeding six months.

**7.** When any person shall be convicted under the provisions of this chapter for any assault, whether with or without battery and wounding, or either of them, such person may, if the Court thinks fit, and on motion of the prosecutor or his counsel, in addition to any sentence which the Court may deem proper for the offence, be adjudged to pay to the prosecutor his actual and necessary costs and expenses of the prosecution and such moderate allowance for the loss of time and injury as the Court shall,

upon affidavit or other enquiry or examination, ascertain to be reasonable; and unless the sum so awarded shall be sooner paid, the offender shall be imprisoned for any term the Court shall award, not exceeding three months, in addition to the term of imprisonment, if any, to which the offender may be sentenced for the offence.

**8.** The Court may, by warrant under its seal, and signed by the Judge, order such sum as shall be so awarded to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and that the surplus, if any, arising from such sale, shall be paid to the owner, and in case such sum shall be so levied, the imprisonment awarded until payment of such sum shall thereupon cease.

**9.** The fine mentioned in the sixth section of this chapter may be apportioned by the said Court as it shall think fit, of which fine, part may be paid to the prosecutor and the remainder to the Receiver General for the use of the colony. In no case under this chapter shall the offender be required to pay more than one hundred dollars, exclusive of costs, for any offence, nor suffer a longer term of imprisonment than six months.

**10.** Every conviction under this chapter shall have the same effect as a conviction upon indictment for the same offence would have had.

**11.** No conviction, sentence or proceeding, under this chapter, shall be quashed for want of form, and no warrant of commitment shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted of some offence named therein, and there be a good and valid conviction to sustain the same.

**12.** If in any case of a criminal nature, tried before such Court, the Court finds the offence not proved, it shall dismiss the charge and make out and deliver to the person charged a certificate stating the cause of such dismissal, and in all such cases the Court may in its discretion order the prosecutor to pay costs to the defendant.

**13.** Every person who obtains a certificate of dismissal or is convicted under this chapter, shall be released from all further criminal proceedings for the same cause, and in all cases where any sum of money is adjudged to the person injured by virtue of the provisions of this chapter, the payment of such money by the offender shall be a bar to all civil proceedings against him for the same offence but not otherwise.

**14.** Any person found committing any offence against this chapter, may be immediately apprehended without a warrant by any person, and forthwith taken before some neighbouring Justice to be dealt with according to law.

# CHAPTER 65.

## Of the Jurisdiction, Powers and Procedure of Stipendiary Magistrates and Justices of the Peace as to certain offences.


SECTION
1.—Malicious injuries to property — limitation.
2.—Arrest without warrant of party found committing offences.
3.—Stealing cod-fish of the value of $20.—Appeal.
4.—Foregoing enactments to apply concurrently with law of England.
5.—Common beggars and vagrants.
6.—Constable may require assistance of bystander—penalty for refusal.
7.—Conviction not to be quashed for want of form.


1. Whosoever shall wilfully or maliciously do or commit any damage, injury or spoil,

(*a.*) To or upon any building, fence, hedge, gate, stile, tree, woods, underwood, orchard, garden, nursery-ground, crop, vegetable, plant, enclosed land, or other matter or thing growing, or being thereon, or to or upon any real or personal property, either of a public or private nature; or,

(*b.*) Shall unlawfully or maliciously cut or carry away or cause to be cut or carried away, any trees, logs, timber or other woods; or,

(*c.*) Shall unlawfully or maliciously break down, cut or carry away any fence, gate, pale or post, standing upon or being upon any public or private lands in this colony,

May be proceeded against before any Justice for the district or place where such offence shall have been committed; and upon conviction thereof shall forfeit and pay to the party aggrieved a sum of money not exceeding twenty-five dollars over and above the costs of recovering the same. And such Justice may also condemn the offender to a further penalty not exceeding twenty dollars.

In default of payment of the sum of money in which the offender shall have been so convicted as aforesaid immediately or within such time as the Justice shall appoint at the time of conviction, together with all costs, charges and expenses attending the conviction, such Justice shall commit such offender to the common gaol for any term not exceeding two months unless such penalty, costs, charges and expenses shall be sooner paid and satisfied.

*Provided*, that in bar and discharge of any proceedings taken under this section, the person charged may plead that the injuries and trespasses complained of, were done with the leave and license from the owner of the property alleged to be injured or trespassed upon, or from the agent of such owner, or from the persons legally entitled to the custody thereof;

and may also plead in like bar and discharge, that such proceedings were not taken within one month next after the committing of the alleged trespass or injury.

**2.** Any person found committing any offence against the preceding section, may be immediately apprehended without a warrant, by any person, and forthwith taken before a Justice of the Peace to be dealt with according to law.

**3.** Any person who shall feloniously steal, take or carry away any cod-fish, green or cured, of a value not exceeding twenty dollars, may be tried in a summary manner before a stipendiary Magistrate, and shall on conviction be subject to imprisonment for a period not exceeding six weeks; and any person subject to imprisonment under this section, may appeal from the judgment or order of such stipendiary Magistrate to the Supreme Court then next to be held at or near the place where such offence shall have been committed, on giving sufficient security to prosecute such appeal, and further to abide by and perform such order or decree as the said Court may make thereon; and on the hearing of such appeal, such Court may admit further and other evidence than that adduced before the said Magistrate, and may confirm, vary or set aside the judgment of such Magistrate, and make such orders as to the execution of any judgment as to it may seem meet. The appeal provided by this section may be heard before one Judge sitting as the Supreme Court either in St. John's or on circuit.

**4.** The foregoing enactments shall in no way prevent the operation of any law of England, with regard to malicious injuries, which may be in force in this colony, but shall run concurrently therewith.

**5.** All common beggars and vagrants having no visible means of subsistence may be arrested by the police and brought before a Justice of the Peace, and on conviction before the said Justice, may be imprisoned for a period not exceeding ten days.

**6.** Any constable, in the execution of his duty, may call upon any by-stander, in the Queen's name, to aid him in preventing a breach of the peace, whenever a breach of the peace is imminent, or to aid him in arresting and detaining in custody any person who is riotous or disorderly, or is committing a breach of the peace; and if any by-stander shall refuse or neglect to aid such constable when so called upon, he shall be deemed guilty of a misdemeanor, and may be tried for such offence in a summary manner before a stipendiary Magistrate, and, on conviction, may be fined a sum not exceeding ten dollars, or be imprisoned for a period not exceeding ten days.

**7.** No conviction or order under this chapter shall be quashed for want of form, and no warrant of commitment shall be held void by reason of any defect therein: Provided there is a valid conviction to maintain such warrant, and it is alleged in the warrant that the party has been convicted.

# CHAPTER 66.

## Of the Removal of Criminal offenders from this Colony.


SECTION
1.—Persons convicted of felony may be adjudged to leave the Colony. Penalty for returning.
2.—Removal from one district to another.
3.—Imprisonment may be dispensed with or reduced.


**1.** The Supreme Court, when any person shall be convicted before it of any felony not a capital felony, if it shall see fit, may adjudge and sentence that such person shall in addition to any other punishment, or without any other punishment, leave this colony after or at the expiration of such other punishment where other punishment may be adjudged, and within a time to be named by the Court as part of the sentence; and that the person so adjudged to leave shall remain away either for a term of years or for life; and such Court shall, as part of the original sentence, further adjudge that in case of such person not departing within the time specified in the sentence, or in case of his returning before the expiration of his sentence (his punishment in that behalf not being lawfully remitted), such person shall be again arrested and committed to prison, there to remain for such period, not exceeding three years, as the Court may direct, and there be subject to hard labour or otherwise; and such person shall, in the event of his not departing, or of his returning as aforesaid, be liable to arrest and detention by any person at any place within this colony for the purpose of his being again imprisoned in manner aforesaid; and such arrest, detention and imprisonment may be without warrant.

**2.** For the purpose of carrying into effect the sentence of the Court, the person so sentenced may be removed from one part of this colony to another, either in the custody of the Sheriff or otherwise as the Court may direct.

**3.** In cases in which offenders coming within the provisions of this chapter, and who may be sentenced to leave this colony, would, for the felonies of which they may be convicted, be liable to imprisonment according to any law now or hereafter to be in force in this colony, the term of imprisonment prescribed by any such law may be dispensed with or reduced, as the case may be: provided that this section shall in no wise affect the term of imprisonment which such offenders may be adjudged to suffer by reason of their not departing or of their returning in manner aforesaid.

# CHAPTER 67.

## Of Whipping and Hard Labor.


SECTION
1.—Offenders in certain cases may be whipped,
2.—Injury to gaols or furniture to be punished by whipping.
3.—Whipping for personal violence.
4.—Magistrates and Justices may impose hard labour.


**1.** When any male person shall be convicted in any Court of Record or before any Justice of any felony or misdemeanor, and it shall be proved, on or after conviction, to the satisfaction of the Court or Justice, that such person has been previously convicted before any Court of Record or Justice in this Colony of felony or misdemeanor, such first-mentioned Court or Justice may, if it or he shall think fit, direct and adjudge that, in addition to any other punishment that may be by law inflicted for such second offence, such person shall be once, twice or thrice, publicly or privately whipped, and in such adjudication prescribe the number of stripes to be given on each occasion, and such adjudication shall be carried into effect by the gaoler of the prison in which such person may be confined: Provided that not more than twenty-five stripes shall be given at any one time.

**2.** Every person confined in gaol in this island who shall wilfully injure or destroy any part of the furniture of such gaol, or damage any of the walls, floors, or other parts thereof, or shall assault any officer or prisoner of or in such gaol, shall be guilty of a misdemeanor, and may be tried therefor in a summary manner before any stipendiary Justice of the Peace, and upon conviction shall be subject to further imprisonment, not exceeding six months, and in the discretion of the said Justice shall, if a male offender, also be liable to be punished by whipping, to the extent and in the manner provided in the preceding section of this chapter.

**3.** When any male person shall be convicted before the Supreme Court of any offence accompanied with severe personal violence, the said Supreme Court, if it shall think fit, may adjudge that in addition to any other punishment that may be by law inflicted, such person shall be once, twice or thrice, publicly or privately whipped, and in such adjudication prescribe the number of stripes to be given on each occasion, and such adjudication shall be carried into effect by the gaoler of the prison in which such person shall be confined: Provided that not more than twenty-five stripes shall be given at any one time.

**4.** In all sentences of imprisonment under summary convictions before a stipendiary Magistrate or Justice, such sentence of imprisonment may be with hard labour during the term of imprisonment, in the discretion of such convicting Magistrate or Justice.

# CHAPTER 68.

## Of the Commutation of Sentences.


SECTION
1.—Every prisoner may earn certain commutation.
2.—Any number of convictions shall be construed as one continuing term.
3.—Term shall begin from date of incarceration.
4.—Forfeiture of commutation for breaking prison.
5.—Commutation on account of sickness.
6.—Record of commutation.
7.—The Governor may allow the amount of commutation earned.
8.—Condition attached to commutation.
9.—Certificate of Superintendent shall be evidence, &c.


**1.** Every prisoner confined in the Penitentiary, on a conviction of a felony or misdemeanor, where the term or terms equals or equal one year, may, by good behaviour, diligence and industry, earn for himself a commutation or diminution of his sentence or sentences, as follows, namely: one month each, for the first and second years; three months each, for the third and fourth years; and four months for each succeeding year.

**2.** Where any prisoner in the Penitentiary is held under more than one conviction, the several terms of imprisonment imposed thereunder shall be construed as one continuing term, for the purpose of estimating the amount of commutation which he may be entitled to under the provisions of this chapter.

**3.** For the purposes of this chapter, the term of imprisonment of each prisoner shall begin on the date of his actual incarceration in said Penitentiary.

**4.** Every prisoner who escapes, attempts to escape, breaks prison, attempts to break prison, breaks out of his cell, or makes any breach therein with intent to escape, or assaults any officer or servant of the Penitentiary, shall forfeit the whole of such remission or commutation which he has earned.

**5.** If any prisoner, by reason of sickness or any other infirmity, not intentionally produced by himself, is unable to labor, he shall be entitled by good conduct, to one-half the remission from his sentence to which he would otherwise be entitled.

**6.** The Superintendent of the Penitentiary shall keep a record setting forth the amount of commutations earned by every prisoner, according to the rules and regulations respecting the discipline and general management of the Penitentiary which have been or which shall be hereafter made and prescribed by the Governor; and a statement shewing the amount of such commutation, earned by each prisoner as aforesaid, shall be transmitted by the said Superintendent to the Attorney General (to be

by him submitted to the Governor) not less than ten days before the day which would be the day of the discharge of such prisoner if the amount of commutation were allowed.

**7.** The Governor, upon the receipt of the said statement in the preceding section mentioned, may in his discretion allow the amount of commutation therein stated, as earned as aforesaid, and direct a warrant to the Superintendent of the Penitentiary for the discharge of such prisoner.

**8.** The Governor shall, in commuting such sentences as aforesaid, annex to such commutation a condition to the effect following, that is to say: That if any prisoner, whose sentence shall have been so commuted, shall, during the period between the date of his discharge, by reason of such commutation, and the date of the expiration of the full term for which he was sentenced, be convicted of any felony, he shall, in addition to the penalty which may be imposed for such felony, be compelled to serve in the Penitentiary the remainder of the term without commutation which he would have been compelled to serve but for the commutation of his sentence as provided by this chapter.

**9.** The certificate of the Superintendent of the Penitentiary, setting forth the crime of which such prisoner was convicted, the length of the term of imprisonment imposed, the amount of commutation granted to such prisoner, and the date of the discharge of such prisoner from the Penitentiary, shall be received as evidence for the purposes mentioned and described in section eight aforesaid

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# CHAPTER 69.

## Of Cruelty to Animals

SECTION
1.—Penalty for Cruelty to Animals.
2.—Penalty in cases of cruelty, where damage occasioned.
3.—Penalty for carrying, &c., animals so as to cause suffering.
4.—Penalty for failure to provide pritchet or support.
5.—Constable on view may arrest offender.
6.—Constable to deposit vehicle in safe place in event of arrest of an offender.
7.—Complaint to be made within one calendar month.
8.—After certain time penalties may be recovered by distress; power to commit offender to prison.
9.—Interpretation clause.

**1.** If any person shall

(1.) Cruelly beat, bind, ill-treat, over-load, over-drive, over-ride, abuse, neglect, expose, torture; or

(2.) Cause to be cruelly beaten, bound, ill-treated, over-laden, over-driven, over-ridden, abused, neglected, exposed or tortured, any animal, such offender shall, for every such offence, forfeit and pay a penalty not exceeding twenty-five dollars.

**2.** If any person by cruelly beating, binding, ill-treating, over-loading, over-driving, over-riding, abusing, neglecting, exposing or torturing any animal, do any damage or injury to any animal, or shall thereby cause any damage or injury to be done to any person or to any property, every such offender shall, on conviction of such offence, pay to the owner of such animal, (if the offender shall not be the owner thereof), or to the person who shall sustain damage or injury as aforesaid, such sum of money by way of compensation not exceeding twenty-five dollars, as shall be ascertained by the Justice of the Peace by whom such person shall have been convicted: Provided always, that the payment of such compensation or any imprisonment for the non-payment thereof, shall not prevent or in any manner affect the punishment to which such person or the owner of such animal may be liable for or in respect of the ill-treating or abusing of the said animal: Provided also that nothing herein contained shall prevent any proceedings by action against such offender, or the employer of such offender, where the amount of damages or injury is not sought to be recovered under this chapter.

**3.** If any person shall convey, or carry, or cause to be conveyed, or carried in or upon any vehicle, or permits, or allows to remain in or upon any vessel, wharf or premises, any animal, in such a manner or position as to subject such animal to unnecessary pain or suffering, every such person shall forfeit and pay a penalty not exceeding twenty-five dollars.

**4.** Every cart or other vehicle, with shafts used for draft purposes, shall be provided with a sufficient pritchet or support, which shall be placed, when the vehicle is stationary, under the shafts thereof, in such a manner as to leave the animal tackled to such vehicle free from the weight of the load thereon. Any person driving any cart or vehicle not provided with such pritchet or support, or neglecting to use the same when necessary, shall be liable to a penalty not exceeding ten dollars.

**5.** When, and so often as any of the offences against the provisions of this chapter shall happen, it shall and may be lawful for any constable, upon his own view thereof, or upon the complaint and information of any other person who shall declare his or her name and place of abode to the said constable, without further authority or warrant, to arrest such offender and provide for his appearance before a Justice of the Peace, to be dealt with by such Justice under the authority of this chapter.

**6.** Whenever any person having charge of any vehicle or any animal, shall be taken into custody by any constable for any offence against the provisions of this chapter, it shall be lawful for such constable to take

charge of such vehicle or animal, and deposit the same in some place of safe custody as a security for payment of any penalty to which the person having had charge thereof, or the owner thereof, may become liable, and for payment of any expenses which may have been or may be necessarily incurred for taking charge of, and keeping the same, and it shall be lawful for any Justice of the Peace before whom the same shall have been heard, to order such vehicle or such animal to be sold for the purpose of satisfying such penalty and reasonable expenses, and in default of payment thereof, in like manner as if the same had been subject to be distrained and had been distrained for the payment of such penalty and expenses.

**7.** Every complaint under the provisions of this chapter shall be made within one calendar month after the cause of such complaint shall arise, and every offence committed against this chapter may be heard and determined by any Justice of the Peace within whose jurisdiction such offence shall be committed, in a summary way, upon the complaint of any person, and without any information in writing, and if the party accused shall be convicted of having committed the offence charged or complained of, the party so convicted shall pay such penalty, damage or compensation as the said Justice shall, according to the provisions of this chapter, adjudge, order, or award, together with the costs of conviction to be settled by such Justice.

**8.** In every case of a conviction under this chapter, where the sum imposed as a penalty or the amount awarded for compensation or damages, together with costs, (if any), by any Justice of the Peace, for or in respect of any offence against the provisions of this chapter, shall not be paid immediately upon the conviction or within such time as the convicting Justice shall, in the exercise of his discretion, appoint and limit in that behalf, the same may be recovered by distress upon the offender's goods and chattels, or the Justice may commit the offender to prison, with or without hard labor, for any time not exceeding one calendar month, unless payment be sooner made.

**9.** The word "animal" under this chapter shall be taken to mean any horse, mare, gelding, bull, ox, cow, heifer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or any other domestic animal.

# CHAPTER 70.

## Of Injuries to Railway Trains.


SECTION
1.—Injuries, &c., to Railway trains; Punishment.
2.—Magistrate to forward complaint to Attorney General.
3.—Appeal.
4.—Bail pending appeal


1. Whosoever shall,—

(*a.*) Unlawfully and maliciously put, place, cast, or throw upon or across any Railway, any wood, stone or other matter or thing, or shall unlawfully and maliciously take up, remove or displace any rail, sleeper or other matter or thing belonging to any Railway, or shall unlawfully and maliciously turn, move, or divert any point or other machinery belonging to any Railway, or shall unlawfully and maliciously make or show, hide or remove any signal or light upon or near to any Railway, or shall unlawfully and maliciously do or cause to be done, or assist in doing or causing to be done, any other matter or thing, or shall unlawfully and maliciously, by any overt act, attempt to do any matter or thing with intent in any of the cases aforesaid, to obstruct, upset, overthrow, injure or destroy any engine, tender, carriage or truck, using such Railway; or,—

(*b.*) Shall by any unlawful act, or by any wilful omission or neglect, obstruct or cause to be obstructed, any engine or carriage using any Railway, or shall aid or assist therein; or,—

(*c.*) Shall unlawfully and maliciously throw or cause to fall, or strike at, against, into or upon any engine, tender, carriage or truck, used upon any Railway, any wood, stone or other matter or thing with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage or truck, or in or upon any other engine, tender, carriage or truck, of any train, of which such first-mentioned engine, tender, carriage or truck shall form part; or,—

(*d.*) Shall by any unlawful act, or by wilful omission or neglect, endanger or cause to be endangered the safety of any person conveyed or being in or upon a Railway, or shall aid or assist therein,—

Shall, on conviction thereof in a summary manner before a stipendiary Magistrate, be imprisoned and kept to hard labour, for a term not exceeding twelve calendar months with or without whipping, at the discretion of the said Magistrate: Provided that nothing in this chapter shall be held to prevent the application of the "Criminal Law Consolidation Acts"

(Imperial, 1861), so far as the same relate to Railways, and that this chapter shall be taken cumulatively with the provisions of the said Acts, or of any other Acts now or hereafter applied to the same subject matter.

**2** It shall be the duty of every stipendiary Magistrate before proceeding to the trial of any person charged with any of the offences mentioned in the chapter, to forward to the Attorney General, or in his absence to the Solicitor General, a copy of the complaint on oath, for his consideration and determination; and if the Attorney General, or in his absence the Solicitor General, be of opinion that from any cause the charge is a fit subject for prosecution by indictment rather than to be disposed of summarily, the said stipendiary Magistrate shall deal with the case in all respects as if this chapter had not been passed.

**3**. Where any person convicted under this chapter, shall be sentenced to imprisonment for a period exceeding three months, or for any period of time with whipping, he may appeal to the Supreme Court in St. John's or on Circuit, which shall hear and determine such appeal, and confirm, reverse or modify the sentence.

**4**. Any person appealing under the foregoing section, may be admitted to bail during the pending of the appeal, by order of the Supreme Court in St. John's or on Circuit, upon recognizances to abide the judgment of the said Court.

# CHAPTER 71.

## Of the Protection of Electric Telegraphs and Telephones.

SECTION
1.—Malicious injuries to telegraph a misdemeanor; penalty, etc.
2.—Attempts to commit offences in section one.
3.—Arrest without warrant.

**1**. Whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure, or remove any battery, machinery, wire-cable, post, or other matter or thing whatsoever, being part of, or being used or employed in or about any electric or magnetic telegraph or telephone, or in the working thereof, or shall unlawfully or maliciously prevent or obstruct in any manner whatsoever the sending, conveyance or delivery of any communication by any such telegraph or telephone shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Supreme Court, to be imprisoned for any term not exceeding two years: provided that if it shall appear to any Justice, on the examination of any person charged with any offence against this section, that it is not

expedient to the ends of justice that the same should be prosecuted by indictment, the Justice may proceed summarily to hear and determine the same, and the offender shall on conviction thereof, at the discretion of the Justice, either be committed to gaol for any term not exceeding three months, or forfeit and pay such sum of money not exceeding fifty dollars, as to the Justice shall seem meet.

2. Whosoever shall unlawfully and maliciously, by any overt act, attempt to commit any of the offences in the preceding section of this chapter mentioned, shall on conviction thereof before a Justice of the Peace, at the discretion of the Justice, either be committed to gaol for a period not exceeding three months, or else forfeit and pay such sum of money, not exceeding fifty dollars, as to the Justice shall seem meet.

3. Any person found committing any offence against the first or second section of this chapter may be immediately apprehended without a warrant by any person, and forthwith taken before a Justice of the Peace to be dealt with according to law.

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# CHAPTER 72.

## Of Injuries to Submarine Telegraph Cables.


SECTION
1.—Confirmation of Convention of 14th March, 1884.
2.—Penalty for unlawfully injuring a Submarine Cable.
3.—Persons who shall not be deemed to have acted unlawfully.
4.—Similar provisions to preceding section.
5.—Aiders or abettors guilty of misdemeanor.
6.—Respecting lights and signals.
7.—Special powers granted to Commanders of Ships of War.
8.—Tribunal.
9.—Merchant Shipping Act to apply.
10.—Evidence before Court.
11.—Concerning the navigating of offending vessels.
12.—Common law rights not subordinated by provisions hereof.
13.—Construction clause.
14.—Time when Act shall come into force.
Schedules—Convention and Articles thereof.


1. The Convention of the fourteenth March, one thousand eight hundred and eighty-four, and the declaration respecting the interpretation thereof, mentioned in the schedules to this chapter, as set forth in the said schedules, are hereby confirmed, and subject to the provisions of this chapter, the Articles of such Convention and Declaration referred to in the Act as the Convention and Declaration, shall be of the same force as if they were enacted in the body of this chapter.

2. A person shall not unlawfully and wilfully, or by culpable negligence, break or injure any submarine cable, to which the Convention for the time being applies, in such manner as might interrupt or obstruct in whole or in part telegraphic communication.

(1.) Any person who acts, or attempts to act, in contravention of this section, shall be guilty of a misdemeanor, and on conviction—

(*a.*) If he acted wilfully, shall be liable to imprisonment for a term not exceeding two years, with or without hard labor, and to a fine, either in addition to such penal servitude or imprisonment; and

(*b.*) If he acted by culpable negligence, shall be liable to imprisonment for a term not exceeding three months, without hard labor, and to a fine not exceeding five hundred dollars, either in lieu of, or in addition to, such imprisonment.

**3.** Where a person does any act with the object of preserving the life or limb of himself or of any other person, or of preserving the vessel to which he belongs, or any other vessel, and takes all reasonable precautions to avoid injury to a submarine cable, such person shall not be deemed to have acted unlawfully and wilfully within the meaning of this section.

**4.** A person shall not be deemed to have unlawfully and wilfully broken or injured any submarine cable where, in the *bona fide* attempt to repair another submarine cable, injury has been done to such first mentioned cable, or the same has been broken, but this shall not apply so as to exempt such person from any liability under this chapter, or otherwise to pay the cost of repairing such breakage or injury.

**5.** Any person who, within, or (being a subject of Her Majesty) without Her Majesty's dominions, in any manner procures, counsels, aids, abets, or is accessory to the commission of any offence under section two of this chapter, shall be guilty of a misdemeanor, and shall be liable to be tried and punished for the offence as if he had been guilty as a principal.

**6.** (1.) It is hereby declared that the enactments of the Merchants' Shipping Act, 1862, and the enactments amending the same, touching regulations as to lights and signals, and for avoiding of collisions, shall extend to authorise regulations for carrying into effect Articles five and six of the schedule to this chapter, within, as well as without, the territorial waters of Her Majesty's dominions, and regulations may be made, applied, altered and revoked, and the contravention thereof punished accordingly under the said enactments; and section six of the Sea Fisheries' Act, 1883, of the Imperial Parliament, shall extend to the enforcement of the said regulations as regards sea fishing boats within the limits of that Act.

(2.) If any vessel engaged in the laying or repairing of a submarine cable, to which the Convention for the time being applies, interferes contrary to the said regulations or Articles, with any vessel engaged in fishing, or if the operations of any vessel in connection with any such submarine cable are wilfully delayed so as to interfere with sea fishing, the master of the

vessel or the owner thereof, if it appear that he was in fault, shall be deemed guilty of a breach of the said regulations, and may be punished accordingly.

**7.** (1.) For the purpose of carrying into effect the Convention, a person commanding a ship of war of Her Majesty, or of any foreign state, for the time being, bound by the Convention, or a ship specially commissioned for the purpose of the Convention by Her Majesty or by the Government of such foreign state, may exercise and perform the powers and duties vested in and imposed on such officer by any Article in the schedule to to this chapter.

(2.) If any person obstructs any such officer in such exercise or performance, or refuses or neglects to comply with any demand or direction lawfully made or given by him in pursuance of this chapter, such person shall be liable, on summary conviction, to a fine not exceeding two hundred and fifty dollars, or to be imprisoned for a term not exceeding two months, with or without hard labor.

(3.) Any action, prosecution or proceeding against any officer for any act done in pursuance or execution, or intended execution of this chapter, or in respect of any alleged neglect or default in the execution of this chapter, shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of.

(4.) In any such action, tender of amends before the action was commenced may, in lieu of, or in addition to, any other defence, be pleaded. If the action was commenced after such tender or is proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed between solicitor and client as from the time of such tender or payment.

**8.** Every such action shall be brought in the Supreme Court of Newfoundland.

**9.** Part X. of the Merchant Shipping Act, 1854 (which relates to legal procedure), and the enactments amending the same, so far as unrepealed, shall have effect as if enacted in this chapter, and offences under this chapter may be tried and fines under this chapter recovered accordingly, save that nothing in the said part shall authorize the award of any punishment not authorized by this chapter, or the summary prosecution of any indictable offence under this chapter.

**10.** (1) Any document drawn up in pursuance of article seven or article ten of the schedule to this chapter, shall be admissible in any

proceeding, civil or criminal, as *prima facie* evidence of the facts or matters therein stated.

(2) If evidence taken in any such document was taken on oath in presence of the person charged in such evidence, and such person had an opportunity of cross-examining the person giving such evidence, and of making his reply to such evidence, the officer drawing up such document may certify the said facts or any of them.

(3) Any document or certificate in this section mentioned, purporting to be signed by an officer authorized to act under the schedule to this chapter, for carrying into effect the Convention, shall be admissible in evidence without proof of such signature; and if purporting to be signed by any other person shall, if certified by any such officer to have been so signed, be deemed until the contrary is proved to have been signed by such other person.

(4) If any person forges the signature of any such officer to any such document as above mentioned, or makes use of any such document knowing the signature thereto to be forged, such person shall be guilty of a misdemeanor and liable on summary conviction to imprisonment for a term not exceeding three months, with or without hard labour: and on conviction on indictment to imprisonment, with or without hard labor, for a term not exceeding two years.

**11.** Where any offence against this chapter has been committed by means of a vessel, or of any boat belonging to a vessel, the master of such vessel shall, until some other person is shown to have been in charge of and navigating such vessel or boat, be deemed to have been in charge of and navigating the same, and be liable to be punished accordingly.

**12.** The provisions of this chapter shall be in addition to and not in derogation of any other provisions existing at common law, or under Act of the Imperial Parliament, or under the law of a British possession, for the protection of submarine cables; and nothing in this chapter shall prevent any person from being liable under any Act of Parliament, law of a British possession, or otherwise, to any indictment, proceeding, punishment or penalty, other than is provided for any offence by this chapter, so that no person shall be punished twice for the same offence; and nothing in this chapter, nor any proceedings with respect to any matter, shall exempt a person from any liability in any action or suit with reference to the same matter, so that no person shall be required to pay compensation twice in respect of the same injury.

**13.** In this chapter, unless the context otherwise requires, the expression "vessel" means every description of vessel used in navigation, in whatever way it is propelled. Any reference to a vessel shall include a reference to a boat belonging to such vessel.

The expression "master" includes every person having command or charge of a vessel.

The expression "British possession" includes any part of Her Majesty's dominions, exclusive of the United Kingdom.

The expression "person" includes a body of persons corporate or incorporate.

**14.** This chapter shall come into force on such day as may be fixed by proclamation of his Excellency the Governor, and if the Convention ceases to be binding upon this colony shall cease to be of any effect.

## SCHEDULE.

### Submarine Telegraphs Convention.

Convention for the preservation of telegraphic communications by means of submarine telegraphs, made on the fourteenth of March, 1884, between Her Majesty the Queen of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Excellency the President of the Argentine Confederation; His Majesty the Emperor of Austria, King of Bohemia, &c, and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of Brazil; His Excellency the President of the Republic of Costa Rica; His Majesty the King of Denmark; His Excellency the President of the Dominican Republic; His Majesty the King of Spain: His Excellency the President of the United States of America; His Excellency the President of the United States of Columbia; His Excellency the President of the French Republic; His Excellency the President of the Republic of Guatemala; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of the Ottomans; His Majesty the King of the Netherlands, Grand Duke of Luxemburg; His Majesty the Shah of Persia; His Majesty the King of Portugal and the Algraves; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; His Excellency the President of the Republic of Salvador; His Majesty the King of Servia; His Majesty the King of Sweden and Norway; and His Excellency the President of the Oriental Republic of the Uruguay.

The following is an English translation of the Convention, with the omission of the formal beginning and end:

#### Article I.

The present Convention applies outside territorial water to all legally established submarine cables landed on the territories, colonies or possessions of one or more of the High Contracting Parties.

ARTICLE II.

It is a punishable offence to break or injure a submarine cable wilfully or by culpable negligence in such manner as might interrupt or obstruct telegraphic communication, either wholly or partially, such punishment being without prejudice to any civil action for damages.

This provision does not apply to cases where those who break or injure a cable do so with the lawful object of saving their lives or their ship, after they have taken every necessary precaution to avoid so breaking or injuring the cable.

ARTICLE III.

The High Contracting Parties undertake that, on granting a concession for landing a submarine cable, they will insist so far as possible upon measures of safety being taken, both as regards the track of the cable and its dimensions.

ARTICLE IV.

The owner of a cable who, on laying or repairing his own cable, breaks or injures another cable, must bear the cost of repairing the breakage or injury without prejudice to the application, if need be, of Article II of the present Convention.

ARTICLE V.

Vessels engaged in laying or repairing submarine cables shall conform to the regulations as to signals, which have been or may be adopted by mutual agreement among the High Contracting Parties, with the view of preventing collisions at sea.

When a ship engaged in repairing a cable exhibits the said signals, other vessels which see them, or are able to see them, shall withdraw to or keep beyond a distance of one nautical mile at least from the ship in question, so as not to interfere with her operations.

Fishing gear and nets shall be kept at the same distance.

Nevertheless, fishing vessels which see, or are able to see, a telegraph ship exhibiting the said signals, shall be allowed a period of twenty-four hours at most within which to obey the notice so given, during which time they shall not be interfered with in any way. The operations of the telegraph ship shall be completed as quickly as possible.

ARTICLE VI.

Vessels which see, or are able to see, the buoys shewing the position of a cable when the latter is being laid, is out of order, or is broken, shall keep beyond a distance of one quarter of a nautical mile at least from the said buoys.

Fishing gear and nets shall be kept at the same distance.

ARTICLE VII.

Owners of ships or vessels who can prove that they have sacrificed an anchor, a net, or other fishing gear, in order to avoid injuring a submarine cable, shall receive compensation from the owner of the cable.

In order to establish a claim to such compensation, a statement, supported by the evidence of the crew, should whenever possible, be drawn up immediately after the occurrence; and the master must, within twenty-four hours after his return to, or next putting into port, make a declaration to the proper authorities.

The latter shall communicate the information to the consular authorities of the country to which the owner of the cable belongs.

ARTICLE VIII.

The tribunals competent to take cognizance of the infractions of the present Convention are those of the country to which the vessel on board of which the offence was committed belongs.

It is moreover understood that, in cases where the provisions in the previous paragraph cannot apply, offences against the present Convention will be dealt with in each of the Contracting States, in accordance, so far as the subjects and citizens of those States respectively are concerned, with the general rules of criminal jurisdiction prescribed by the laws of that particular State or by international treaties.

ARTICLE IX.

Prosecutions for infractions provided against by Articles II, V, and VI, of the present Convention, shall be instituted by the State or in its name.

ARTICLE X.

Offences against the present Convention may be verified by all means of proof allowed by the legislation of the country of the Court. When the officers commanding the ships of war, or ships specially commissioned for the purpose by one of the High Contracting Parties, have reason to believe that an infraction of the measures provided for in the present Convention has been committed by a vessel other than a vessel of war, they may demand from the captain or master the production of the official documents proving the nationality of the said vessel. The fact of such document having been exhibited shall then be endorsed upon it immediately. Further, formal statements of the facts may be prepared by the said officers, whatever may be the nationality of the vessel incriminated. These formal statements shall be drawn up in the form and in the language used in the country to which the officer making them belongs; they may be considered in the country where they are adduced as evidence in accordance with the laws of that country. The accused and the witnesses shall have the right to add, or to have added, thereto, in their own lan-

guage, any explanations they may consider useful. These declarations shall be duly signed.

ARTICLE XI.

The proceedings and trial in cases of infraction of the provisions of the present Convention, shall always take place as summarily as the laws and regulations in force will permit.

ARTICLE X.

The High Contracting Parties engage to take, or to propose to their respective Legislatures, the necessary measures for insuring the execution of the present Convention, and especially for punishing by either fine or imprisonment, or both, those who contravene the provisions of Articles II, V, and VI.

ARTICLE XIII.

The High Contracting Parties will communicate to each other laws already made, or which may hereafter be made in their respective countries, relating to the object of the present Convention.

ARTICLE XIV.

States which have not signed the present Convention may adhere to it on making a request to that effect. This adhesion shall be notified through the diplomatic channel to the Government of the French Republic, and by the latter to the other signatory Powers.

ARTICLE XV.

It is understood that the stipulations of the present Convention do not in any way restrict the freedom of action of belligerents.

ARTICLE XVI.

The present Convention shall be brought into force on a day to be agreed upon by the High Contracting Parties. It shall remain in force for five years from that day, and unless any of the High Contracting Parties have announced, twelve months before the expiration of the said period of five years, its intention to terminate its operation, it shall continue in force for a period of one year, and so on from year to year. If one of the signatory Powers denounce the Convention, such denunciation shall have effect only as regards that Power.

ARTICLE XVII.

The present Convention shall be ratified, and the ratifications exchanged at Paris with as little a delay as possible, and, at the latest, at the expiration of a year.

ADDITIONAL ARTICLE.

The stipulations of the Convention concluded under to-day's date, for the protection of Submarine Cables, shall be applicable in conformity with

Article I. to the Colonies and Possessions of Her Britannic Majesty, with the exception of those hereinafter mentioned, namely :—

Canada,
Newfoundland,
The Cape,
Natal,
New South Wales,
Victoria,
Queensland,
Tasmania,
South Australia,
Western Australia,
New Zealand.

Provided always, that the stipulations of the said Convention shall be applicable to any of the above-named Colonies or Possessions, on whose behalf notice to that effect shall have been given by Her Britannic Majesty's representative at Paris, to the French Minister for Foreign Affairs.

Each of the above-named Colonies or Possessions, which may have acceded to the said Convention, shall be at liberty to withdraw from it in the same manner as the Powers parties to it. In the event of any of the said Colonies or Possessions desiring to withdraw from the Convention, a notification to that effect shall be made by Her Britannic Majesty's representative at Paris, to the French Minister for Foreign Affairs.

SUBMARINE TELEGRAPH DECLARATION.

Certain doubts having been raised as to the word "wilfully" used in Article II. of the Convention of the fourteenth March, One thousand eight hundred and eighty-four, it is understood that the provision in respect of penal responsibility contained in the said Article does not apply to cases of breakage or injury caused accidentally or of necessity in the repair of a cable, when all precautions have been taken to avoid such breakage or injury.

It is equally understood that Article IV. of the Convention had no other object, and is to have no other effect, than to empower the competent tribunals of each country to decide in conformity with their laws and according to the circumstances, the question of the civil responsibility of the owner of a cable who, in laying or repairing his own cable, breaks or injures another cable, as well as the consequences of such responsibility if it is recognised as existing.

# CHAPTER 73.

## Of Preventing Enlistment in the Service of any Foreign State, and the Exportation of Arms and Munitions of War.


SECTION
1.—Prevention of Foreign Enlistment.
2.—Prevention of exportation of arms, &c.
3.—Proclamations may be amended.
4.—Violation of Act; Penalty.
5.—Mode of trial.
6.—Justice of Peace may issue warrant, &c.
7.—Foreign State; meaning.
8.—Limitation.


**1.** The Governor in Council may, by proclamation in the *Royal Gazette*, prohibit any person in this colony from enlisting or engaging in the naval or military service of any foreign state, and also from recruiting, hiring, or engaging, or procuring or attempting to recruit, hire or engage, or procuring, soliciting or persuading any person to enlist or engage, in such service.

**2.** The Governor in Council may, by proclamation in the *Royal Gazette*, prohibit the exportation of arms, gunpowder, military and naval stores, and munitions of war, explosives and ingredients used in the manufacture of explosives, marine engines, screw propellers, paddle-wheels, cylinders, cranks, shafts, boilers, tubes for boilers, boiler plates fire bars, every article or any other component part of an engine or boiler, or any article whatever which is, can, or may become applicable for the manufacture of marine machinery, torpedoes, torpedo boats fitted with apparatus to be used for torpedoes, all apparatus for projecting inflammable materials or firing torpedoes, pumps or other machinery intended to be used for projecting inflammable materials, and machinery intended to be used in the construction of torpedoes or torpedo boats from this colony, and also to prohibit the importation of the same, if imported for the purpose of exportation, or make rules and regulations with regard to such exportation, or importation for the purposes of exportation, which rules and regulations shall be published in the *Royal Gazette*.

**3.** The Governor in Council may, by proclamation as aforesaid, rescind, alter, vary, amend or renew such proclamation, rules and regulations, from time to time.

**4.** Any person violating the provisions of this chapter, or of the proclamation, rules or regulations, made by virtue of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding four hundred dollars; and in default of payment, to imprisonment for a term not exceeding two years, or to both fine and imprisonment at the discretion of the Court before which such conviction takes place, and such imprisonment may be with or without hard labour.

5. Any person under this chapter shall be tried before the Supreme Court, and shall, for the purposes of such trial, be held to have been committed in the place where the offence is tried.

6 Any Justice of the Peace may, upon complaint on oath, issue his warrant for the arrest of any person charged with a violation of this chapter, and cause such person to be brought before him or some other Justice of the Peace, and the person so charged may, upon enquiry, be either discharged or committed to gaol by such Justice of the Peace, until the person so charged shall have given sufficient bail to appear before the Supreme Court to answer such charge.

7. In this chapter "foreign state" includes any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province or people.

8. No prosecution shall be commenced under this chapter more than one year after the commission of the offence.

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# CHAPTER 74.

## Of Public Processions.

SECTION
1.—Governor may prohibit processions in certain cases.
2.—Penalty for walking in prohibited processions.
3.—Appeal.
4.—Bail pending appeal.

1. It shall be lawful for the Governor at any time, when it shall appear to him that any public procession which is about to take place is likely to result in a breach of the peace, to issue a proclamation prohibiting such procession, which proclamation shall be published in the *Royal Gazette*.

2. Every person who, after the publication of such proclamation, shall walk in, or in any way take part in any procession referred to in such proclamation, shall, upon conviction before a stipendiary Magistrate, be liable to a penalty not exceeding fifty dollars, or imprisonment for a period not exceeding ten days.

3. Any person who shall feel himself aggrieved by any order or judgment of any stipendiary Magistrate, acting under the provisions of this chapter, may appeal to the then next sittings of the Supreme Court, either in St. John's or on Circuit, nearest to the place where such offence shall have been committed: Provided notice of such appeal be given to such Magistrate within two days after such order or judgment shall have been

made or given, and provided recognizance or other security satisfactory to such Magistrate be entered into within the same period for the prosecution of such appeal without delay, and for the payment of the penalty imposed in case such order or judgment be sustained, and all costs.

**4.** Any person imprisoned under the second section of this chapter who shall have given notice of appeal, as provided by the third section, may be admitted to bail pending such appeal upon recognizance for his surrender to the custody of the Sheriff of the district in which the alleged offence shall have been committed, at such time as shall be appointed by such Magistrate, and for the payment of the costs as well of the hearing before such Magistrate as of the said appeal: Provided such recognizance be satisfactory to such stipendiary Magistrate.

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# CHAPTER 75.

## Of Lotteries.

SECTION
1.—Penalty for publishing or holding a lottery of any kind. How enforced and applied.
2.—Penalty for buying and selling lottery tickets.
3.—Sales, gifts, &c., founded in lotteries, to be null and void. Forfeiture.
4.—As to purchasers without notice.
5.—Non-payment of penalties.
6.—Chapter not to extend to *bona fide* division of property held in common.
7.—Limitation of suits.

**1.** If any person make, print, advertise, or publish, or procure to be made, printed, advertised, or published, any proposal, scheme or plan for holding a lottery, or for advancing, lending, giving, selling, or in any way disposing of any money, or any other property, by lots, cards, tickets, dice or any mode of chance whatever, or sell, barter, exchange give, lend, or otherwise dispose of, or cause, or procure, or aid, or assist in the sale, barter, exchange, gift, or loan of any money or property, or of any lot, card, ticket, or other means or device for advancing, lending, giving, selling, or otherwise disposing of any money or property, by lots, tickets, or any mode of chance whatever, such person shall, upon conviction thereof in a summary manner before any stipendiary Justice, forfeit a sum not exceeding fifty dollars for every such offence, together with costs; which forfeiture and costs shall be levied by distress and sale of the offender's goods by warrant of such Justice; and such forfeiture shall be applied one-half to the person suing for the same, and the other half to the Receiver General for the use of the colony.

**2.** Any person buying, bartering, exchanging taking, or receiving any such money or property, or any such lot, card, ticket, or other device, as in the first section of this chapter mentioned, shall upon conviction thereof, in like manner as therein mentioned, forfeit the sum of twenty dollars for such offence, to be recovered with costs, and to be applied as aforesaid.

**3.** Any sale, loan, gift, barter, or exchange of any money or any property by any lottery ticket, card or other mode of chance whatever, depending upon or to be determined by chance or lot, shall be void to all intents and purposes: and all such money or property so sold, lent, given, bartered or exchanged, shall be forfeited to such person as will sue for the same by action or information in any Court of Record in this colony.

**4.** No such forfeiture shall affect any right or title to such property acquired by any *bona fide* purchaser for valuable consideration without notice.

**5.** If any person so convicted as aforesaid have not sufficient goods and chattels whereon to levy the penalties authorized by this chapter, or do not immediately pay the said penalties, the Justice convicting such person shall commit him to prison for a period not exceeding three months, unless such fine and costs be sooner paid.

**6.** Nothing in this chapter contained shall prevent joint-tenants, tenants in common, or persons having joint interest in any property, from dividing any such property by lot or chance in the same manner as if this chapter had not been passed; and the Magistrates, during any seasons of general festivity and other special occasions, may license and permit the holding of cake, bazaar and other lotteries, if of a character which they shall regard as unobjectionable, upon such conditions as they may consider necessary for the preservation of order and propriety.

**7.** The prosecution of every offence punishable under this chapter shall be commenced within two months next after the commission of such offence, and not afterwards.

# CHAPTER 76.

## Of Forest Fires.

SECTION
1.—No person shall light a fire near any woods.
2.—Every person lighting a fire for clearing land shall use care.
3.—Precautions to be taken by persons lighting fires.
4.—Owner of land upon which a fire takes place shall be deemed to be the offender.
5.—If fire happens on Crown lands, parties engaged near the place shall be deemed the offenders.
6.—Every person in charge of surveying, &c., parties to be provided with a copy of this Act.
7.—Locomotive engines shall be guarded.
8.—Duty of engine driver to see engine guarded.
9, 10, 11.—Penalty.
SECTION
12.—Proof of name or number of engine not necessary.
13.—Railway companies shall remove combustible material from track.
14.—Penalty.
15.—Duty of Government Engineer.
16.—Power of Government Engineer.
17.—Penalty for obstructing.
18.—Mode of prosecution and recovery of penalties.
19.—Appropriation of fine or penalty.
20.—Imprisonment.
21.—Compensation.
22.—Limitation of actions.
23.—Duty of Crown lands' officers and constables.
24.—Meaning of "Woods."
25.—Right to bring civil action not affected.

**1.** It shall not be lawful for any person to set out, light or start, or cause to be set out, lighted or started, any fire in or near any woods in this colony, except for the purposes of clearing land, cooking, obtaining warmth, or for some industrial purpose; and, in case of lighting or starting fires for any such purpose, the obligations and precautions imposed by the two following sections shall be observed.

**2** Every person who shall make or start, or cause to be made or started, a fire for the purpose of clearing land, shall exercise and observe every reasonable care and precaution in the making and starting of such fire, and in the managing of, caring for and controlling the said fire after it has been made and started, in order to prevent the same from spreading and burning up the trees, shrubs or plants surrounding, adjoining, or in the neighborhood of the place where it has been so made or started.

**3.** Every person who shall, between the first day of May and the thirtieth day of November, make or start, or cause to be made or started, a fire in or near the woods for cooking, for obtaining warmth, or for any industrial purpose, shall—

(1.) Select a locality in the neighborhood in which there is the smallest quantity of dead wood, branches, brushwood, dry leaves, resinous trees, heath, peat, turf, dry moss, or vegetable matter of any kind.

(2.) Clear the place in which he is about to light the fire by removing all dead wood, branches, brushwood, dry leaves, resinous trees, heath, peat, turf, dry moss and other vegetable matter from the soil, within a distance of not less than five feet in every direction from any part of the fire.

(3.) Exercise and observe every reasonable care and precaution to prevent such fire from spreading, and carefully extinguish and see that the same is extinguished before quitting the place

**4.** The owner or occupant of the land upon which any fire mentioned in the foregoing section shall be made or originate, shall be deemed and taken to be the party offending, and shall be liable to the several penalties provided by this chapter, unless such owner or occupant shall, when called upon so to do, declare upon oath before a stipendiary Magistrate that such fire was not made, started or lighted by him, or by any person by his direction.

**5.** Whenever a fire originates on Crown lands, and in the neighborhood of any place where it has been ascertained that a person or a number of persons were a short time previously to the happening of such fire, camping, cooking, fishing, or engaged in some industrial occupation, he or they shall be taken to be the party or parties offending, and shall be liable to the several penalties provided by this chapter, unless he or they shall, when called upon to do so, declare upon oath before a stipendiary Magi-

strate, that such fire was not made, started or lighted by him or them, or by anyone in his or their company or service, or by his or their direction.

**6.** Every person in charge of any party of men engaged in lumbering, railroad building, surveying or exploring, shall provide himself with a copy of this chapter, and shall take steps to make the men employed by or under him acquainted with its provisions.

**7.** All locomotive engines shall, by the person, company, or manager thereof, using the same, be provided with and have in use all the most improved and efficient means to prevent the escape of fire from the furnace or ash-pan of such engines, and the smoke-stack or the boiler extension of each wood-burning locomotive so used, shall be provided with a bonnet, screen or spark-arrester of iron or steel-wire netting, the size of the wire used in making the netting to be not less than No. 19 of the Birmingham wire guage, or three sixty-fourth parts of an inch in diameter, and shall contain in each square inch at least eleven wires each way at right angles to each other, that is, in all twenty-two wires to the square inch: or, in the case of coal-burning locomotives, the smoke-stack, furnace and ash-pan shall be constructed of the newest and most improved pattern, the standard to be that which at the passing of the Act 53 Victoria, chapter nine, was used by the Placentia railway.

**8.** It shall be the duty of every engine driver in charge of a locomotive, to see that all such appliances as are above mentioned are properly used, and so as to prevent the unnecessary escape of fire from any such engine, so far as it is reasonably possible to do so.

**9.** Any person violating the first, second or third sections of this chapter, shall be liable to a penalty of not less than twenty-five dollars, nor more than one hundred dollars, for each offence.

**10.** Any person violating the sixth or eighth sections of this chapter, shall be subject to a penalty of not less than twenty-five dollars, nor more than one hundred dollars, for each offence.

**11.** Any person, railway company, or the manager thereof, permitting any locomotive engine to be used in violation of the seventh section of this chapter, shall be liable to a penalty of one hundred dollars for each offence.

**12.** In any prosecution under this chapter for a breach of the seventh section, or for damages in a civil action, resulting from fires set by locomotive engines, it shall not be necessary to prove the name or number of the engine, nor the name of the engineer or fireman in charge of such locomotive when the fire was started.

**13.** Whenever a railway passes through woods, the railway company shall clean from off the sides of the railway to a reasonable distance therefrom, all combustible material by safe burning or otherwise.

14. Any railway company violating the thirteenth section of this chapter, shall be subject to a penalty of one hundred dollars for each offence.

15. It shall be the duty of the Government Engineer to inspect and examine, or cause to be inspected or examined, from time to time, all locomotive engines used in the colony, with a view of ascertaining whether the provisions of this chapter are complied with, and for the purpose of enforcing the said provisions.

16. The Government Engineer, or other person authorized by him in writing, shall have power to enter into any shed or shop or upon any premises where locomotive engines are kept, for the purpose of inspecting and examining such locomotive engines.

17. Any person or persons obstructing or interfering with such engineer or other person authorized by him in the discharge of his duty, shall be subject to a penalty not exceeding one hundred dollars for each offence.

18. All offenders against the provisions of this chapter may be prosecuted and convicted, and all fines, penalties and punishments imposed, recovered and made in a summary manner before a stipendiary Magistrate by any person who shall make complaint and prosecute the offender to conviction.

19. Whenever any fine or penalty imposed under the provisions of this chapter is recovered, one moiety thereof shall be awarded to the person prosecuting the offender to conviction, and the other moiety shall be paid to the Receiver General for the use of the colony.

20. In case the amount of any penalty recovered under the provisions of this chapter and costs be not paid forthwith, the offender shall be subject to a term of imprisonment of one day for each dollar of such penalty and costs.

21. Whenever any fire is caused or originated by any locomotive engine under the control or in the service of the Government of this colony, and loss by such fire is occasioned to the owner or lessee of any property through those in charge of any such locomotive engine not adopting the precautions contained in the provisions of this chapter, for the purpose of ascertaining the damage that has been occasioned the owner or lessee by such fire, the Governor may appoint one person and the party so affected another person, which two persons shall determine by arbitration the amount of compensation to be paid such party according to his interest therein; and in case such two parties should not agree in their award, then they shall name a third arbitrator, and in case they should not agree over the nomination of such third arbitrator, either party may apply to the Supreme Court or a judge thereof, and upon

hearing such application the said Court or a judge thereof shall appoint such third arbitrator; and the said arbitrators shall be sworn before a magistrate to do justice between the parties, and may summon and require the attendance before them of all parties interested in the property, their agents and all necessary witnesses, and require before them the production of all deeds and papers requisite to establish the title or interest of any party claiming compensation as aforesaid, and may examine upon oath (to be administered by any one of such arbitrators) all such parties, agents or witnesses touching the matters to be enquired into by such arbitrators, and the award and decision of such arbitrators or any two of them shall in all cases be final and binding on all parties.

**22.** All proceedings for offences against the provisions of this chapter shall be commenced within six calendar months following the day of the commission of such offence, and all claims against the Government for damages occasioned by any locomotive engine under the control or in the service of the Government, shall be furnished at the office of the Government Engineer within six months from the happening of such casualty by fire.

**23.** It shall be the duty of all officers of the Crown lands and all constables to enforce the provisions and requirements of this chapter, and in all cases coming within their knowledge to prosecute every person who may be guilty of a breach of the provisions and requirements of the same, under a penalty of not less than twenty-five nor more than one hundred dollars for each omission of duty.

**24.** In this chapter the word "woods" shall include forest, wood, tract covered by underwood, barren, dry marsh or bog.

**25.** Nothing in this chapter contained shall be held to limit or interfere with the right of any party to bring and maintain a civil action for damages occasioned by fire, and such right shall remain and exist as though this chapter had not been passed, except such right shall not extend to cases provided for under section twenty-one of this chapter.

# TITLE VIII.

## OF RIGHTS OF PROPERTY, AND THE ACQUIRING AND DISPOSITION THEREOF.

## CHAPTER 77.

### Of Chattels Real.


SECTION
1.—All land, &c., in Newfoundland to be "chattels real."
2.—Rights and claims to land, &c., to be determined according to foregoing section.


**1.** All lands, tenements, and other hereditaments in Newfoundland and its dependencies, which by the common law are regarded as real estate, shall, in all Courts of Justice in this colony, be held to be "chattels real," and shall go to the executor or administrator of any person or persons dying, seized or possessed thereof, as other personal estate now passes to the personal representatives, any law, usage or custom to the contrary notwithstanding.

**2.** All rights or claims which have heretofore accrued in respect to any lands or tenements in Newfoundland, and which have not already been adjudicated upon, shall be determined according to the provisions of the foregoing section; but nothing herein contained shall extend to any right, title, or claim to any lands, tenements or hereditaments, derived by descent, and reduced into possession before the twelfth day of June, anno Domini eighteen hundred and thirty-four.

## CHAPTER 78.

### Of Estates of Homestead.


SECTION
1.—Estates of homestead, not exceeding twenty acres, exempt from execution, sale, &c.
2.—How acquired; extent; Registration fee.
3.—Homestead title not to be defeated by conveyance, &c.
4.—Partition of property subject to homestead.
5.—Estate of homestead to be set apart in case of insolvency.
6.—Execution upon property after reserving homestead.
7.—Homestead after death for benefit of widow and minor children.
8.—Rights of widow and children may be sold or leased.


**1.** Every person who shall settle upon any of the wilderness lands of this colony, and cultivate and improve the same, and erect a dwelling house thereon, shall be entitled to an estate of homestead therein not

exceeding twenty acres; and such homestead, and all right and title therein, shall be exempt from attachment, levy or execution, sale for the payment of his debts or other purposes, and from the laws of conveyance, distribution and devise, or bequest, except as hereinafter provided.

**2.** To constitute such an estate of homestead, and to entitle property to such exemption, it shall be set forth in the grant or deed of conveyance by which such property is acquired, that it is designed to be held as a homestead, or after the title has been acquired, such design shall be declared in writing, duly signed, acknowledged and recorded in the registry of the district where the property is situated, according to the form in the schedule hereto annexed; but the acquisition of a new estate of homestead in either of the said modes, shall defeat and discharge any estate or right of homestead previously existing; but no person shall hold, exempted as a homestead, land of greater extent than twenty acres. And for every registration under this chapter there shall be paid to the registrar the sum of one dollar.

**3.** No conveyance of property in which an estate or right of homestead exists, and no release or waiver thereof, shall operate to convey that part so held and exempted, or defeat the right of the owner, or his wife and children, to have a homestead therein, except by leave of the Supreme Court, to be granted on the petition of such owner, and his wife (if any), if it shall be thought expedient, having regard to the interests of all concerned, to grant such leave, upon such terms as the Court may direct.

**4.** Where an estate or right of homestead exists in property in which other parties have an interest, the party entitled to the homestead, or any other party interested, may upon petition have partition thereof as by law provided, but not in any way to affect the estate of homestead therein

**5.** When the property of a debtor is vested in a trustee, under the insolvent laws, and such debtor claims, and it appears to the Court or a judge before whom the proceedings in insolvency are pending, that he is entitled to hold any part thereof as homestead, and that the property in which such homestead exists is of greater extent than twenty acres, the Court or judge shall cause the estate of homestead, to the extent of twenty acres, including the dwelling house thereon, to be set apart to the insolvent, and the residue shall vest in and be disposed of by the trustee, in the same manner as property not exempt by law from levy or execution.

**6.** If a judgment creditor requires an execution to be levied on property claimed by the debtor to be exempt from levy as a homestead, and it appears to the sheriff, to whom such execution is directed, that the premises are of greater extent than twenty acres, the sheriff shall set off the estate of homestead to the extent of twenty acres, including the dwelling house thereon to the debtor, and the residue of the property shall be levied upon and disposed of in like manner as land and property not exempt from levy or execution.

**7.** The estate or right of homestead of any householder, existing at his death, shall continue for the benefit of his wife and minor children, and be held and enjoyed by them, if some one of them occupies the premises, until the youngest child is twenty-one years of age, and until the marriage or death of the widow; and shall, upon the death of such householder, be limited to that period; but all the right, title and interest of the deceased in the premises where such estate or right exists, except the estate of homestead thus continued, shall be subject to the laws relating to devise and bequest, distribution and sale, for the payment of debts against the estate of deceased.

**8.** The widow or the guardian of the minor children, or both, may by leave of the Supreme Court or a judge thereof, to be granted on petition of either, in such case as the Court or judge may deem it expedient, effect a sale or lease of such estate of homestead, and the purchaser thereof shall have the right to enjoy and possess the premises for the full time that the widow and children, or either of them, might have continued to hold and enjoy the same if no sale had been made, or shall, if the Court or judge shall grant leave so to sell, take an absolute or such other estate in the premises as the Court or judge may allow, the proceeds in either of the foregoing cases to be applied as the Court or judge may direct, for the benefit of the parties interested therein.

## SCHEDULE.

To all to whom these presents shall come, greeting:

I, , of , under and by virtue of the provisions of chapter seventy-eight of the consolidated statutes, second series, hereby declare that I design and intend that all that piece or parcel of land situate at [here state locality], and owned by me, and bounded as follows [here set out boundaries], shall be held by me as a homestead under the said chapter.

In witness whereof I have hereunto set my hand this day of , A. D. 18 .

A. B.

The execution of the above was acknowledged before me and deposited with me for registration this day of , at o'clock, by the said A. B.

C. D., *Registrar*.

# CHAPTER 79.

## Of the making, &c., of Last Wills and Testaments.


SECTION
1.—Wills, how executed.
2.—Age of person competent to make a will.
3.—Appointment by will in exercise of power, how executed.
4.—Publication not necessary.
5.—Incompetency of witness not to invalidate will.
6.—Devise to witness not void if will can be otherwise proved.
7.—Executor may be witness.
8.—Will revoked by marriage.
9.—Will not revoked by presumption of intention.
10.—Manner of revocation of will.
11.—Alterations in will after execution.
12.—Revoked will not revived otherwise than by re-execution.
13.—Subsequent conveyance not to affect will.
14.—Construction of will as to time.
15.—Construction of general devise.
16.—Construction of certain terms.
17.—To prevent lapsing of devise.
18.—Limitation of provisions of chapter.


**1**. No will shall be valid unless it be made in writing, nor unless it be either in the handwriting of the testator, and signed by him, or, if not so written and signed, be signed by him in the presence of at least two witnesses, who shall, in the presence of the testator, sign the same as witnesses, and in case such will shall be made by a marksman, unless the same shall have been first read over to or by the testator in the presence of the said witnesses: Provided, that any seaman or fisherman, being at sea, may dispose of his property in the same manner as he might have done before the passing of this chapter.

**2**. No will shall be valid if made by a person under the age of seventeen years.

**3**. No appointment made by will, in exercise of any power, shall be valid unless the same be executed in manner hereinbefore required: and every will so executed shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

**4**. Every will executed in manner hereinbefore required shall be valid without any publication thereof.

**5**. If any person who shall attest the execution of a will shall, at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

**6** No devise, bequest, legacy, estate, interest, gift or appointment, to any person, or to the husband or wife of any person, who shall attest the execution of any will, shall be null and void if the will can be sufficiently

proved according to the provisions hereinbefore contained, without proof by such person of the execution thereof; but where the will cannot be sufficiently proved without the evidence of such person, he or she shall be admitted as a witness to prove the execution, or the validity, or invalidity, of such will, and in such case the devise, bequest, legacy, estate, interest, gift or appointment, in his or her favor, shall be null and void.

**7.** No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

**8.** Every will made by a man or a woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the property thereby appointed would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled as his or her next of kin, under the statute of distributions.

**9.** No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

**10.** No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, and with the intention of revoking the same.

**11.** No obliteration, interlineation, or other alteration, made in any will after the execution thereof, shall be valid or have any effect except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be made and executed in manner hereinbefore required; but such will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator, or such signature and the subscription of the witnesses, as the case may be, be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end, or some other part of the will, or attached thereto.

**12.** No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

**13.** No conveyance or other act made or done subsequently to the re-execution of a will of, or relating to, any property therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such property as the testator shall have power to dispose of by will at the time of his death.

**14.** Every will shall be construed with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

**15.** A general devise or bequest of the property of any kind of the testator, or of such property in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any property to which such description shall extend (as the case may be) which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

**16.** In any devise or bequest of any property, the words "die without issue," "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior quasi estate tail, or of a preceding gift being without any implication arising from such words or limitation of quasi estate tail to such person or issue, or otherwise: Provided that this chapter shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

**17.** Where any person, being a child or other issue of the testator, to whom any property shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

**18.** This chapter shall not extend to any will made prior to the thirteenth day of October, in the year of our Lord one thousand eight hundred and sixty-four.

# CHAPTER 80.

## Of the Registration of Deeds.


SECTION
1.—Governor in Council shall appoint Registrar of Deeds.
2.—Registration Office.
3.—Deputy Registrar may be appointed by Registrar.
4.—Registrar liable for neglect.
5.—Deeds, &c., to be registered in suitable books.
6.—Concerning registration of deeds, &c.
7.—Proof of deeds.
8.—Relating to deeds executed out of this Colony.
9.—Proof of decrees and judgments.
10.—When witnesses and parties dead, deed to be registered upon proof of death.
11.—Deeds executed under a power of attorney.
12.—Registrar shall put certificate on deed.
13.—Deeds shall be held to be registered from time of deposit.
SECTION
14.—Deeds not registered, and mortgage by deposit of deeds without writing, shall be void against subsequent purchaser, &c.—Proviso.
15.—Tacked mortgage, no priority.
16.—Registry of release or transfer of mortgage.
17.—Subpœna.
18.—Proof of deeds executed out of the Colony.
19.—Deeds registered before June 9, 1846, may be re-registered free of charge.
20.—Act does not apply to leases at rack rent.
21.—Proof of Wills.
22.—Conveyances of chattels to be registered.
23.—Registry of Wills.
24.—Fees.
25.—Account of fees to be rendered to Governor in Council.


**1.** The Governor in Council shall appoint a Registrar of Deeds for this colony and its dependencies, to be called the "Registrar of Deeds."

**2.** The registration office shall be kept in St. John's, at such place as the Governor in Council shall appoint, and shall be provided with fireproof safes for the safe custody and preservation of all records, books and papers of registry, and all deeds and writings deposited for registration.

**3.** The said registrar may appoint, as and when occasion may require or he may deem it necessary, with the approval of the Governor in Council, a deputy registrar who may discharge all the duties imposed upon the registrar by this chapter.

**4.** If the said registrar or deputy registrar shall be guilty of any neglect or fraudulent practice in the performance of the office, the registrar shall be liable for all damages to the party injured, to be recovered with costs of suit in any Court of Record having jurisdiction to the extent of the amount claimed as damages.

**5.** All deeds, decrees, judgments, conveyances, and other assurances whatsoever, whereby any lands or tenements in this colony and its dependencies, shall be hereafter granted, conveyed, devised, mortgaged, charged or otherwise affected in any manner whatsoever having been proved in manner hereafter provided, shall be registered at the registration office in suitable books of registry, and a double index to such books of registry shall be kept by the registrar, to contain, in case of deeds and writings other than decrees and judgments, the names of the parties thereto, the situation of the property, the character of deed, and the date and conside-

ration; and in cases of decrees and judgments, the dates thereof, the names of the plaintiffs and defendants, the situation of the property, and the Court in which such decrees or judgments were made.

6. When any such deeds, decrees, judgments, conveyances and other assurances, shall be duly proved in manner hereinafter provided, and deposited in the registration office, the registrar shall, upon receiving the fees payable by virtue of this chapter, copy a memorial of the same in the books of registry, and also enter therein copies of all plans and schedules therewith and annexed thereto; and every such memorial shall contain a statement of the year and day of the month on which such deed, decree, judgment, conveyance or other assurance shall bear date, the names and additions (if any) of all and every the parties, as well as the names and additions (if any) of the subscribing witnesses thereto, the signatures of the parties executing the same, the description at length of the lands or tenements conveyed or charged or intended to be conveyed, charged or affected by such deed, decree, judgment, conveyance or other assurance, as the same are herein described, the consideration of every such deed, conveyance or other assurance and the conditions for defeasance; and in cases of decrees and judgments, the certificate under the seal of the Court wherein such decree or judgment was passed, all which particulars shall be entered and recorded in the said books of registry with all convenient despatch in the order of time in which the same shall have been proved and deposited.

7. All such deeds, conveyances and other assurances, aforesaid, executed within this colony, shall be proved by the affidavit of a subscribing witness or any party executing the same, or upon the personal acknowledgment of a party from whom an interest passes, to be made before the said registrar, deputy registrar, a Judge or Commissioner of affidavits of the Supreme Court, or a Justice, who shall in the case of an acknowledgment, sign a certificate of such acknowledgment on such deed, conveyance or other assurance, or on a paper annexed thereto, declaring such acknowledgment and the date thereof, and such certificate and affidavit shall be registered.

8. All such deeds, conveyances and other assurances, aforesaid, executed out of this colony may (if the party or witnesses be in the colony at the time of proof) be proved in the manner prescribed in the foregoing section, and if such be not the case they shall be proved in the manner prescribed in the preceding section before a Commissioner of the Supreme Court, a Judge of a Court of Record, the Mayor or Chief Magistrate of any city or town, a Justice, a British Ambassador, Consul, Vice-Consul or Consular-Agent, and the attestation or acknowledgment, with the date thereof, shall, when made before a Judge of a Court of Record, a Mayor of any city or town, be certified under the seal of such Court, city or town, and when made before a Justice, a British Ambassador, Consul, Vice-Consul or Consular Agent, the official character of such Justice, British Ambassador, Consul, Vice-Consul or Consular Agent, shall be certified

under the hand of a Notary Public; and such attestation, certificate and affidavit shall also be registered.

**9.** All such decrees and judgments aforesaid, shall be proved by a copy under the seal of the Courts, and certified by the clerk thereof.

**10.** When all the subscribing witnesses to the execution of any such deed, conveyance, or other assurance, aforesaid, and all the parties thereto shall be dead; or when the deed, conveyance or other assurance, having been executed in this colony, the witnesses to the same and the parties thereto shall be absent therefrom, the registrar shall register such deed, conveyance or other assurance, upon sufficient proof upon oath of such death, or absence, of the handwriting of any of the subscribing witnesses thereto, or of the party or parties executing the same from whom some interest shall pass, such proof to be made before the registrar, deputy registrar, or a Judge of the Supreme Court, a Commissioner of affidavits, or a Justice; and the affidavit by which such proof is made shall be registered.

**11.** When any such deed, conveyance or other assurance, shall be executed under a power of attorney, the power may be registered, upon being duly proved in manner herein provided for the proof of deeds; and no registry of a deed so executed shall be valid unless such power be registered within six months after the registry of such deed, or unless a deed duly proved in manner aforesaid, subsequently confirming the execution of the first deed, conveyance or other assurance, be registered within that period.

**12.** The registrar shall endorse and sign upon every such deed, decree, judgment, conveyance or other assurance, a certificate in which shall be expressed the day and time when the same was actually deposited for registration, and the volume and page in which the registry thereof is entered, and every certificate so endorsed and signed shall be taken and allowed as evidence of the time when the same was deposited and of the registry thereof.

**13.** Every deed, conveyance and other assurance, aforesaid, shall be held to be duly registered from the time it shall have been duly deposited in manner aforesaid.

**14.** All such deeds, conveyances or other assurances, affecting any lands or tenements in this colony made after the twenty-seventh day of March, Anno Domini eighteen hundred and sixty-two, and not duly proved and registered, and every mortgage by deposit of deeds without writing, shall be judged fraudulent and void, both at law and in equity, as against any subsequent purchaser or mortgagee for valuable consideration, who shall first register his deed, conveyance or mortgage of such lands or tenements, or against any trustee of an insolvent estate, or any assignee or trustee under a conveyance for the benefit of creditors, or against any creditor who shall have actually seized or levied under attachment or

execution: Provided that such attachment, with a description of the property attached, shall be entered by the sheriff in his office books immediately after such attachment shall be executed and duly returned with the writ.

**15.** No mortgage affecting any such lands or tenements shall have any priority by reason of being held by or vested in the same person with another mortgage of prior date and registry.

**16.** The registrar shall not be compelled to copy in full the release or transfer of a mortgage of any lands or tenements, but he shall register a memorial of such release or transfer to contain the names of the parties and the subscribing witness thereto, the date thereof and the consideration therefor, and also shall enter a reference to the volume and the page of the registry of such mortgage, and on such page shall make a marginal note of such release or transfer.

**17.** The process of subpœna may be issued out of the Supreme Court as in ordinary cases, with the necessary variation in form, to compel the attendance of any witnesses or parties to any such deed, conveyance or other assurance aforesaid, or the production thereof for proof, that the same may be registered; and such Court or Judge thereof shall have power to punish any disobedience to such subpœna by process of contempt; but no witness or party shall be compelled to produce, under such subpœna, any deed, conveyance or other assurance, which he would not be compelled to produce on a trial in a Court of Justice; and every such witness or party shall be entitled to be paid the customary allowance to a witness.

**18.** When any such deed, conveyance or other assurance shall be executed out of this colony and duly proved in manner hereinbefore provided, the registrar shall register such deed, conveyance or other assurance, and the certificate of proof upon the production to him of a copy thereof, authenticated by a certificate under the hand and seal of a Commissioner of the Supreme Court, a Judge of a Court of Record, Chief Magistrate, Mayor of any city or town, British Ambassador, Consul or Vice-Consul, at or near the place where the parties executing the same, or a subscribing witness thereto, may reside; and the registrar shall also register such last certificate, and such registration shall be as valid to all intents and purposes as if the original deed, conveyance or other assurance had been produced to such registrar.

**19.** Any person who shall hold any deed, will, conveyance or other assurance, affecting any lands or tenements in this colony, executed before the fire in St. John's on the ninth day of June, Anno Domini eighteen hundred and forty-six, whereby several volumes of the registry of deeds of the Central District were destroyed and which had been duly registered in any of the volumes so destroyed, may present such deed, will, conveyance or other assurance to the registrar of deeds who shall register a memorial thereof free of charge.

**20**. Nothing in this chapter contained shall extend to leases at a rack rent.

**21**. Where any will is proved and filed with the registrar of probates, a certified copy thereof under his hand and seal (if any) of the Probate Court may be registered in the registration office without further proof.

**22**. All bills of sale, conveyances and mortgages of personal chattels in this colony, being deeds of gift, or wherein the *bona fide* consideration thereof shall exceed the sum of Four hundred dollars, and where the actual possession of such chattels shall continue in the grantor or mortgagor, shall be registered upon payment of fees and proof and deposit, as hereinbefore provided, and all such bills of sale, conveyances or mortgages not registered, shall be adjudged fraudulent and void, as against a subsequent purchaser or mortgagee for valuable consideration, who shall first register his bill of sale, conveyance or mortgage, and also as against any subsequent and actual attachment or levy under process of any of the Courts of the Island upon such personal chattels, and also as against a trustee of an insolvent estate, or any assignee or trustee under a conveyance for the benefit of creditors.

**23**. All wills of which probate or administration *cum testamento annexo*, shall hereafter be granted in this colony, shall be copied by the said registrar into a book, to be kept in the registry office as and for the purpose of a registry of wills, and there shall also be entered into the said book at the end of every will a memorandum setting forth the following particulars, viz., the date upon which, the Court or Judge by whom, and the person upon whose petition probate or administration *cum testamento annexo*, was granted, and the sworn value of the estate: and a suitable index of such book shall be kept. In the event of the loss of any original will or the probate thereof, the said registry or a certified copy thereof, shall be received as evidence of the contents of such will and of the due execution thereof, and of the facts set forth in the said memorandum in all cases in which the original will or the said facts would be receivable in evidence.

**24**. The registrar of deeds shall be entitled to receive the following fees from parties depositing documents for registration:—

For registering all deeds, decrees, judgments, bills of sale, conveyances, mortgages and the certificates thereto, required to be registered, when the actual value of the property passsing thereby shall not exceed Four hundred dollars... $2 00

Where such value shall exceed Four hundred dollars and be under Two thousand dollars, Two dollars for the first Four hundred dollars, and Twenty-five cents for every additional One hundred dollars.

Where the value shall exceed Two thousand dollars, the sum of Twenty cents for every additional One hundred dollars.

For registering every release or transfer of mortgage ... ... $1 00

For every search. Every search to consist of the examination of any number of volumes or different parts of the same volume or volumes, and of the indexes thereto in relation to the same property or subject matter at the same time or visit ... ... ... ... ... ... ... 0 25

For every certificate ... .. ... ... ... ... 0 50

For registering a power of attorney ... ... ... ... 2 50

**25.** The registrar of deeds shall render to the Governor in Council, half yearly, for the information of the Legislature, accounts of all fees received by him, which fees shall be paid in half-yearly, to the Receiver General.

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# CHAPTER 81.

## Of the Property of Married Women.

SECTION
1.—Married woman capable of holding property and of contracting as a *feme sole*
2.—Property of a woman married after April 21st, 1883, to be held by her as a *feme sole.*
3.—Loans by wife to husband.
4.—Execution of general power.
5.—Property acquired after 21st April, 1883, by woman married before that date to be held by her as a *feme sole.*
6.—As to stock, etc., to which a married woman is entitled.
7.—As to stock, etc., to be transferred, etc., to a married woman.
8.—Investment in joint names of married woman and others.
9.—As to stock, etc., standing in the joint names of a married woman and others.
10.—Fraudulent investments with money of husband.
SECTION
11.—As to policies of life insurance.
12.—Remedies of married women for protection and security of separate property.
13.—Wife's ante-nuptial debts and liabilities.
14.—Husband to be liable for his wife's debts contracted before marriage, to a certain extent.
15.—Suits for ante-nuptial liabilities.
16.—Wife liable to criminal proceedings for acts in respect of property.
17.—Trial of certain questions between husband and wife, as to property.
18.—Married woman as an executrix or trustee.
19.—Saving of existing settlements, and the power to make future settlements.
20.—Married woman liable for the maintenance of her children.
21.—Proviso as to "Married Woman's Property Act of 1876."
22.—Legal representative of married woman.
23.—Interpretation of terms.

**1.** (1) A married woman shall, in accordance with the provisions of this chapter, be capable of acquiring, holding and disposing, by will or otherwise, of any real or personal property as her separate property in the same manner as if she were a *feme sole*, without the intervention of any trustee.

(2) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either

in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her, and any damages or costs recovered by her in any such action or proceeding shall be her separate property, and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise.

(3) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shewn.

(4) Every contract entered into by a married woman with respect to and to bind her separate property shall bind, not only the separate property which she is possessed of or entitled to at the date of the contract, but all separate property which she may thereafter acquire.

(5) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the Insolvency laws in the same way as if she were a *feme sole*.

**2.** Every woman married after the twenty-first day of April, one thousand eight hundred and eighty-three, shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money or property gained or acquired by her in any employment, trade or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic or scientific skill.

**3.** Any money or other estate of the wife lent or entrusted by her to her husband, for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his insolvency, under reservation of the wife's claim to a dividend, as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

**4.** The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities, in the same manner as her separate estate is made liable under this chapter.

**5.** Every woman, married before the twenty-first day of April one thousand eight hundred and eighty-three, shall be entitled to have and to hold, and to dispose of in manner aforesaid, as her separate property,

all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion or remainder, shall accrue after the said date, including any wages, earnings, money and property so gained or acquired by her as aforesaid.

**6** All deposits in any savings' bank, or in any other bank, and all sums of money forming part of the public debt of this colony, and all Government debentures, and all shares, stock, debentures, debenture stock, or other interests of or in any bank, corporation, company or public body, municipal, commercial or otherwise, or of or in any industrial, provident, friendly, building or loan society, which on the twenty-first day of April, one thousand eight hundred and eighty-three, are standing in the sole name of any married woman, shall be deemed, unless and until the contrary be shewn, to be the separate property of such married woman, and the fact that any such deposit, sum or sums of money forming part of the said public debt, share, stock, debenture, debenture stock or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorize and empower her to receive or transfer the same, and to receive the dividends, interest and profits thereof, without the concurrence of her husband, and to indemnify the Receiver General and all directors, managers and trustees of every such bank, corporation, company, public body or society as aforesaid, in respect thereof.

**7.** All sums forming part of the public debt of this colony, and all such deposits as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock or other interests of or in any such bank, corporation, company, public body or society as aforesaid, which, after the twenty-first day of April, one thousand eight hundred and eighty-three, shall be allotted to, or placed, registered or transferred in or into, or made to stand in the sole name of any married woman, shall be deemed, unless and until the contrary be shewn, to be her separate property, in respect of which, so far as any liability may be incident thereto, her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is registered or recorded, or not: provided always, that nothing in this chapter shall require or authorize any bank, corporation or company to admit any married woman to be a holder of any shares or stock therein, to which any liability may be incident, contrary to the provisions of any act of the Legislature of this colony, or of any charter, bye-law, article of association, or deed of settlement regulating such bank, corporation or company.

**8.** All the provisions hereinbefore contained as to deposits in any savings' bank, or in any other bank, sums forming part of the public debt of this colony, Government debentures, shares, stock, debentures, debenture stock or other interests of or in any such bank, corporation, company, public body or society as aforesaid, respectively, which on the twenty-first day of April, A. D. 1883, shall be standing in the sole name of a married

woman, or which after that time shall be allotted to, or placed, registered or transferred to or into, or be made to stand in the sole name of a married woman, shall respectively extend and apply so far as relates to the estate, right, title or interest of the married woman to any of the particulars aforesaid, which on the twenty-first day of April, A. D 1883, or at any time afterward, shall be standing in, or be allotted to, placed, registered or transferred to or into, or made to stand in the name of any married woman, jointly with any persons or person other than her husband.

**9.** It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such deposits as aforesaid, or any sum forming part of the public debt of this colony, or of any Government debentures, or of any share, stock, debenture, debenture stock or other benefit, right, claim or other interest of or in any such bank, corporation, company, public body or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman, and any other persons or person, not being her husband.

**10.** If any investment in any such deposit as aforesaid, or in any part of the public debt of this colony, or in any Government debenture, or in any share, stock, debenture or debenture stock of or in any bank, corporation, company or public body, municipal, commercial or otherwise, or in any share, debenture, benefit, right or claim whatsoever in, to or upon the funds of any industrial, provident, friendly, benefit, building or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the Supreme Court or a judge thereof may, upon an application under section seventeen of this chapter, order such investment and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this chapter contained shall give validity, as against the creditors of the husband, to any gift by a husband to his wife of any property which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of monies of the husband made by or in the name of his wife in fraud of his creditors; but any monies so deposited or invested may be followed as if this chapter had not been passed.

**11.** A married woman may, by virtue of the power of making contracts hereinbefore contained, effect a policy of insurance upon her own life, or the life of her husband, for her separate use, and the same and all benefit thereof shall enure accordingly. A policy of assurance effected by a man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or of any of them, or by any woman on her own life and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the assured,

or be subject to his or her debts; provided that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the assured, they shall be entitled to receive out of the moneys payable under the policy a sum equal to the premiums so paid The assured may, by the policy or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the assured and his or her legal personal representatives, in trust for the purposes aforesaid. If at the time of the death of the assured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees, or a new trustee or new trustees, may be appointed by the Supreme Court or a judge thereof. The receipt of a trustee or trustees duly appointed, or in default of any such appointment, or in default of notice to the assurance office, the receipt of the legal personal representative of the assured shall be a discharge to the office for the sum secured by the policy, or for the value thereof in whole or in part.

**12.** Every woman, whether married before or after the twenty-first day of April, A. D. 1883, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section, it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: provided always, that no criminal proceeding shall be taken by any wife against her husband, by virtue of this chapter, while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert his wife.

**13.** A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into, or wrongs committed by her before her marriage; and she may be sued for any such debt, and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property, and as between her and her husband, unless there be any contract between

them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts or wrongs, and for all damages or costs recovered in respect thereof: provided always, that nothing in this chapter shall operate to increase or diminish the liability of any woman, married before the said twenty-first day of April, A. D. 1883, for any such debt, contract or wrong as aforesaid, except as to any separate property to which she may become entitled by virtue of this chapter, and to which she would not have been entitled for her separate use if this chapter had not passed.

**14.** A husband shall be liable for the debts of his wife contracted, and for all contracts entered into, and wrongs committed by her before marriage, to the extent of all property whatsoever belonging to his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bona fide* recovered against him in any proceeding at law, in respect of any such debts, contracts or wrongs, for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise, and any Court in which a husband shall be sued for any such debt shall have power to direct any enquiry or proceedings which it may think proper, for the purpose of ascertaining the nature, amount and value of such property: provided always, that nothing in this chapter contained shall operate to increase or diminish the liability of any husband married before the twenty-first day of April, A. D. 1883, for or in respect of any such debt or other liability of his wife as aforesaid.

**15.** A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action, brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him, or to which he shall have become so entitled to as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against the husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally, and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

**16.** A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this chapter, shall in like manner be liable to criminal proceedings by her husband.

**17.** In any question between husband and wife, as to the title to or possession of property, either party, or any such bank, corporation, public body, company, or society, as aforesaid, in whose books any stocks, funds, or shares of either party are standing, or in case of investment in the public debt of this colony, the Receiver General for the time being may, on giving notice to the other party, apply to a Judge of the Supreme Court, and thereupon such Judge shall make such order, direct such enquiry, and award such costs as he shall think fit; provided, that when any order is made by such Judge, either party, or any such bank, corporation, company, public body, or society, as aforesaid, or such Receiver General, shall be entitled to a rehearing, and the Judge may, if either party, or any such bank, corporation, company, public body, or society, as aforesaid, or such Receiver General, so require, hear the application in his private room; provided also, that any such bank, corporation, company, public body or society, as aforesaid, or such Receiver General, shall, in the matter of any such application, for the purposes of costs or otherwise, be treated as a stake holder only.

**18.** A married woman who is an executrix or administratrix alone, or jointly with any other person or persons, of the estate of any deceased person, or a trustee alone, or jointly, as aforesaid, of property subject to any trust, may sue or be sued, and may transfer, or join in transferring, any such deposit, as aforesaid, or any sum forming part of the public debt of this colony, or any Government debenture, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of, or in any such bank, corporation, company, public body, or society, in that character, without her husband, as if she were a *feme sole*.

**19.** Nothing in this chapter contained shall interfere with or affect any settlement or agreement for a settlement made, or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or hereafter to be attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before her marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

**20.** A married woman having separate property shall be subject to all such liability for the maintenance of her children and grand-children, as the husband is now by law subject to for the maintenance of her children and grand-children; provided always, that nothing in this chapter shall relieve her husband from any liability imposed upon him by law to maintain her children or grand-children.

**21**. Nothing in this chapter contained shall affect any act done or right acquired while the Married Woman's Property Act of 1876 was in force, or any right or liability of any husband or wife, married before the twenty-first day of April, A. D. 1883, to sue or be sued, under the provisions of the said Married Woman's Property Act of 1876, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the twenty-first day of April, 1883.

**22**. For the purposes of this chapter, the legal personal representative of any married woman shall, in respect of her separate estate, have the same rights and liabilities, and be subject to the same jurisdiction, as she would be if she were living.

**23**. The word "contract" in this chapter shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this chapter, as to the liabilities of married women, shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman, being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this chapter includes a *chose* in action.

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# CHAPTER 82.

## Of the Estates of Infants.


SECTION
1.—Court may order sale of real estate, &c., of infants.
2.—Effect of conveyance by guardians, &c. Report.
3.—Appropriation of proceeds.
4.—Interest of infants in proceeds.
5.—Conveyances to be presumptive evidence that proceedings were rightly had.


**1**. An infant entitled to real estate or chattels real, may, by his next friend or guardian, petition the Court for an order to sell or dispose of the said property, and the said Court shall proceed in a summary way, on affidavit, to enquire into the merits of such application; and if the disposal of such property, or any part thereof, be necessary for the support of such infant, or for his education furnished or to be furnished, or if the interests of the infant will be substantially promoted by such disposal on account of any part of the said property being exposed to waste or dilapidation, or being wholly unproductive, or for any other reasonable cause, the Court may, on the filing of a bond by such guardian or next friend, or other person approved of by the Court, in case he be not already a law-

fully appointed guardian, with such sureties, in such form, and on such terms and conditions as shall be directed, order the letting for a term of years, the sale mortgage or other disposal of such property, whether possessory or reversionary, by such guardian or next friend, in such manner and with such restrictions as shall be deemed expedient, but not in any case contrary to any last will or conveyance by which such property was devised or conveyed to such infant, unless where the support or maintenance of the infant shall have required or shall then require it, and it shall be so expressed in the order.

**2.** All sales, leases, mortgages, or conveyances, made in good faith by any guardian or next friend, in pursuance of such order, shall be as effectual as if made by such infant after he had attained the age of twenty-one years; and it shall not be necessary, in the conveyance, to recite any part of the proceedings required by this chapter, but the same shall briefly refer to the order and the sale, leasing, or other disposal of such property. The party making the sale shall file a report thereof with the Chief Clerk and Registrar of the Court.

**3.** Upon any order for the sale of any property being made as aforesaid, the Court may make such order for the investment, disposal and application of the proceeds of such property, and of the increase and interest arising therefrom, as shall secure the same for the infant's benefit.

**4.** No sale made as aforesaid shall give to any such infant any other or greater interest or estate in the proceeds of such sale than he had in the estate so sold.

**5.** Every conveyance made under the foregoing provisions, and registered in the office of registration for the district in which the lands lie, shall be taken as presumptive evidence that all the proceedings on which the same is founded were rightly had.

# TITLE IX.

## CHAPTER 83.

### Of Insolvency.


SECTION

1.—Court or Judge may declare persons insolvent.
2.—Party declared insolvent not liable to arrest.
3.—Proceeding to be by petition.
4.—Time to be appointed. Examiner. Notice in newspapers. Petition to be filed.
5.—Insolvency in outports. Notice on Court House, &c.
6.—Judge may order examinations to be taken at any place.
7.—Adjournment of hearing. Petition may be dismissed.
8.—Insolvent liable to punishment in certain cases.
9.—Petition not to be withdrawn without consent of creditors.
10.—Power of summoning witnesses. No seal necessary.
11.—Void assignments, &c.
12.—Trustees. Their duties. Not bound to accept leasehold interests.
13.—Liabilities of trustees and assignees.
14.—Trustees may be changed at instance of creditors.
15.—Compensation to trustees.
16.—Judge may order performance of certain matters before discharge of debtor.
17.—Costs of attachment, &c., to be allowed.
18.—Other costs to be in discretion of the Court or Judge.
19.—Costs of creditors.
20.—Costs, how taxed.
21.—Insolvent refusing to deliver up property may be remanded or committed.
22.—Certificate, how granted.
23.—Rent coming due after insolvency.
24.—Seamen, fishermen and other servants privileged creditors.
25.—If estate insufficient, to be paid rateably.
26.—Servants engaged without merchant's knowledge not privileged creditors.
27.—Servant *bona fide* shipped in place of another, privileged creditor.

SECTION

28.—Receiver entitled to same defence as hirer.
29.—In action by servant against receiver, sufficient if insolvency be made to appear.
30.—Collusion between servant and hirer.
31.—Recovery against receiver, other than supplier.
32.—Sealers preferential in certain cases.
33.—Distribution of estate.
34.—Clerks' and servants' wages and fishermen, &c., to be paid first.
35.—Crown debts second charge. Debts due Savings' Bank.
36.—Current supplier to rank next.
37.—Insolvency of deceased persons.
38.—Judge may refer claims, &c., to master.
39.—Appeal.
40.—Judge may make further orders.
41.—Party giving false evidence guilty of perjury.
42.—Jury may be empannelled to try questions of fact.
43.—Arrangements and compositions.
44.—Relief of trustee in such cases.
45.—Avoidance of composition.
46.—Continuation of liability notwithstanding composition.
47.—Inexpedient compositions.
48.—Exceptions to three preceding sections.
49.—Rights of creditors preferential by law shall be prior claims.
50.—Mode of calculating number and value of creditors.
51.—Arrangement or composition, to have same effect as a certificate of insolvency.
52.—Liability of person secondarily liable not affected by this chapter.
53.—Distraint.
54.—Rent falling due.
55.—Debts provable in insolvency, mode of calculating dividend.
56.—Payment of dividend by trustee.
57.—Creditor, on giving up security, can prove for whole debt.
58.—Illness or absence of Judge.

59.—Judge to be deemed a Court of Record.


#### Proceedings in Insolvency.

**1**. The Supreme Court, in term or vacation, or any Judge thereof in chambers, may declare any person insolvent who may be made to appear to the satisfaction of such Court or Judge (in manner hereinafter provided) insolvent or unable to pay his creditors one hundred cents to the dollar; and in case such person shall have been arrested and be in prison or on bail under mesne or final process, or by virtue of any other proceeding either at law or in equity, except for contempt for any matter other than

the non-payment of money, may discharge him from prison, unless he shall have rendered himself liable to punishment in manner hereinafter provided and exonerate his bail; and in case a writ of attachment shall have been issued against such person, the property attached under which shall have been relieved from attachment by security, may discharge such security from further responsibility upon the property so attached being delivered up, or the value of it paid into Court to the credit of the insolvent estate, in cases where, or the extent to which, the security would be liable to answer by his bond.

2. No person declared insolvent under this chapter shall be liable thereafter to arrest or imprisonment for any debts or liabilities for which a certificate of insolvency and discharge under this chapter would be a discharge.

3. Any debtor desiring to be declared insolvent, or any person desiring to have his debtor declared insolvent, shall proceed by petition, directed to the Court or Judge, as the case may be, setting forth that such debtor is insolvent or unable to pay his creditors one hundred cents to the dollar, and, in case of the debtor himself being the petitioner, having attached to the petition a schedule containing a true account of his debts and liabilities and of his assets; and where the petition is by a creditor, the said petition shall have attached to it a like schedule, or a statement of such facts as may satisfy the Court or Judge that the order hereinafter mentioned should be made upon the petition or that the case is one for enquiry. The petition shall have attached to it an affidavit of the truth of its contents, and where a schedule accompanies, of the contents of such schedule.

4. The Court or Judge shall appoint a specified time and place for the hearing, the rule or order for which shall, when the application is made in St. John's, be published in the *Royal Gazette* and one other newspaper of the colony, at least one week before the hearing; the petition, schedule and affidavit having prior to the publication of the rule or order, been filed in the registrar's office.

5. Where the application is made to declare a debtor insolvent in an outport, the rule or order for hearing shall be posted up in a conspicuous place at the Court House, and such other place or places for such length of time, or where no Court House, at such place or places and for such a length of time as the Court or Judge may direct.

6. The Court or Judge proceeding under this chapter may, if necessary, direct the examination before an examiner at any place, of any petitioner, debtor or witness, and for such purpose may postpone or adjourn from time to time the hearing or adjudication of any application to declare a debtor insolvent.

7. The Court or Judge may, upon motion, or with the consent of the petitioner, adjourn the hearing from time to time, if in the opinion of

the Court or Judge it may be necessary or advisable so to do in order to satisfy such Court or Judge of the insolvency of the party sought to be declared insolvent; or the Court or Judge may dismiss the petition for want of sufficient evidence of insolvency.

PENAL PROCEEDINGS.

8. The person sought to be declared insolvent, if so declared, shall be liable to punishment by imprisonment in the following cases, for any period not exceeding two years from time of adjudication. If when insolvent, and with a view of fraudulently giving an undue preference to any creditor or of fraudulently diminishing his assets, he have conveyed, charged, mortgaged or otherwise granted or assigned his property or effects, or any part or parts thereof, or made any gift, delivery or transfer of any of his goods or chattels, or made any payment in money or otherwise, or discharged any debt due from any debtor, or if he have concealed any part of his property, debts or effects with the intent of diminishing the sum to be divided amongst his creditors; if he have, with intent to conceal the state of his affairs, kept false books or made false entries, or withheld entries from, or wilfully altered or falsified, any books, papers or writings, or have destroyed or otherwise wilfully prevented or purposely withheld, the production of any books, papers, writings or evidence relating to such of his affairs as are subject to investigation under this chapter; or if he have contracted any of his debts by means of a breach of trust, or by means of false pretences, or without having reasonable or probable expectation at the time when contracted of paying the same; or if he shall have put any creditor to unnecessary expense by the vexatious defence of any action or suit, or shall be indebted for damages recovered in any action for a malicious prosecution, or for libel or slander, or for criminal conversation, or seduction, or assault and battery, or for damages recovered in any action for malicious injury, or in an action of tort, where it shall appear that the injury complained of was malicious; or if he shall have done any other act fraudulent towards his creditors: Provided that, in the cases aforesaid where the insolvent shall be indebted for damages, or the matter shall be one of personal wrong, he may be relieved from punishment in the first place, and from his imprisonment at any time within the period of such imprisonment, by the consent of the party aggrieved, or the plaintiff or all the plaintiffs in any action for such damages, if he be not otherwise liable to punishment or imprisonment under this section.

9. After it shall be made to appear to the Court or a Judge that the party sought to be declared insolvent is insolvent, no petition praying that a debtor be declared insolvent under the provisions of this chapter shall be withdrawn or proceedings thereon stayed or prevented if any creditor shall object thereto, except in cases of liquidation or composition as hereinafter provided; and for the purpose of securing the person of any debtor not in prison who may be declared insolvent, the Court or Judge may, at any time before he may have obtained his certificate and final discharge, make a rule or order directed to the sheriff of the district or any other

person to apprehend the person of such debtor and bring him before such Court or Judge to be examined or to receive punishment: Provided that in case such debtor require further time to bring proof, or require other reasonable delay, the Court or a Judge may grant such further time or delay and commit him to prison provisionally, or, upon the debtor providing bail or security for his appearance, discharge him from custody until the expiry of such further time.

EVIDENCE.

**10.** For the purposes of this chapter the Court or Judge may, either in term or vacation, exercise the like powers for summoning and compelling the attendance of witnesses, the taking of evidence, the ordering of examinations, the issuing of commissions to take evidence, and for the punishment of persons guilty of contempt, as the Supreme Court now exercises in any action or proceeding at law: Provided that in the case of proceedings by or before a Judge under this chapter, there shall be no necessity for the use of a seal, but the name of a Judge, in his handwriting, shall be sufficient.

PREFERENTIAL ASSIGNMENTS, ETC.

**11.** Every charge, mortgage, conveyance, grant or assignment of the property or effects of an insolvent, or of any part thereof, and every gift, delivery or transfer of any of his goods or chattels, and every payment made by him in money, or otherwise, and every cognovit, warrant of attorney, judgment, or other security whatsoever, paid, made or given by any insolvent within two months prior to his declared insolvency, and with a view to give an undue preference to any creditor, shall be and are hereby declared to be null and void and of no effect in case the person taking or receiving the same, or for whose benefit the same was taken or received, had notice or was aware of the insolvency: Provided that nothing in this chapter contained shall invalidate such charge, grant or assignment, or the gift, delivery or transfer of any goods or chattels, if the same shall, subsequently to the execution or making thereof, have been assigned to or be in the hands or possession of any *bona fide* holder for valuable consideration, not having had notice of the character of such appropriation prior to the transfer to him; but the person or persons first entitled, their executors, administrators and estates, shall be liable to account for the value to the trustees of the estate of the insolvent in such case; and in case they have realized any of the said securities, they shall be liable in an action for money had and received or otherwise; and nothing herein contained shall be construed to confirm or make valid any acts otherwise void.

TRUSTEES.

**12.** At or any time after the making of the rule or order provided in the fourth section of this chapter, the Court or Judge may make an order which shall be published in the *Royal Gazette* and one other newspaper,

vesting the estate of the person sought to be declared insolvent in a trustee or trustees, whose duty it shall be to discover, collect and receive the estate and effects of such person, and to hold the same, subject to the orders and directions of the Court or Judge; and in the event of the person being declared insolvent, to invest, realize, and distribute the same, under the direction of the Court or Judge and the provisions of this chapter; and such trustee or trustees may sue both at law and in equity, in his or their own name, for and upon all causes of action for the benefit of the insolvent estate, in the same way as the insolvent himself might have done; and in any proceeding, it shall be sufficient for them to declare or plead as trustees of such insolvent, and proceed at once to the statement of the cause of action, without setting out the particulars of their appointment, and as nearly as applicable according to the forms used by executors, or administrators: Provided, that in the case of leasehold interests and tenancies, the trustee or trustees shall not be bound to accept the same, but may within one month after the declaration of insolvency notify the landlord, in writing, of his or their intention not to hold as tenant; whereupon his or their interest or liability shall cease; but the estate of the insolvent shall be liable for rent from the time of the appointment of trustees until such notice shall have expired.

(*a.*) The working tools and implements of trade of any person, his fishing skiff or punt, the necessary cooking apparatus, the bedding and wearing apparel of himself and family, shall not pass to or vest in the trustee under this chapter.

**13.** The trustees or assignees of the estate and effects, or any part thereof, of any debtor, under any conveyance or assignment for the benefit of creditors, shall be liable and compellable to pay out of the first proceeds all creditors who, in case of a declaration of insolvency under this chapter, would have preferential claims; and such trustees or assignees shall also be liable and compellable, unless a majority in number and value of the creditors shall otherwise agree, to distribute such estate and effects according to the provisions of this chapter, as in the case of insolvency, anything in any such conveyance or assignment contained to the contrary notwithstanding; and all such trustees and assignees shall, in the distribution of such estate and effects in such cases, be subject to the order and direction of the Supreme Court or a Judge thereof, as fully and in like manner as the trustees of the estate of any person declared insolvent.

**14.** The trustee or trustees shall be changed or removed by the Court or Judge, at the instance of a majority in number and value of the creditors, and such person or persons appointed in his or their place as the said majority may recommend; and may also be removed for any sufficient cause appearing to the Court or Judge; and the Court or Judge may require trustees to find sureties for the faithful execution of their office.

**15.** The trustee or trustees shall be entitled to such compensation, not exceeding five per cent. on the realized value of assets, over and above

the actual and reasonable expenses and disbursements, as the Court or Judge may allow.

**16.** Where, in case a person sought to be declared insolvent is in prison, it shall be deemed expedient by the Court or Judge that certain matters or things ought to be performed by such person before he be actually discharged from custody, the Court or Judge may remand such person to prison until the performance of such matters or things, or until such further time or times as the hearing may be adjourned to; or such Court or Judge may take bail for the performance of such matters or things within a certain time.

Costs.

**17.** The costs of all proceedings whereby the body or any portion of the estate and effects of the insolvent may have been taken or secured before the declaration of insolvency shall be payable out of the estate.

**18.** The costs of the petitioner, and other costs not herein provided for, shall be in the discretion of the Court or Judge.

**19.** The costs of creditors proving their debts shall be borne by themselves: Provided that if any creditor give frivolous or vexatious opposition to the claim of another creditor, and cause such other creditor extraordinary expense in the proof of his debt, the dividend of such opposing creditor shall be liable, in the distribution of the estate, for such extraordinary expenses.

**20.** Costs shall be taxed as nearly as applicable, except the costs of a suit at law, according to the practice on the equity side of the Court.

Delivery of Property.

**21.** In case any person declared insolvent, or sought to be declared insolvent, shall wilfully refuse to deliver up to the Court or Judge, or to the trustee or trustees, any property, money or effects, deeds, accounts, books, or other documents, pursuant to any order of such Court or Judge, or shall disobey any other order made in the premises by such Court or Judge, such Court or Judge may remand or commit him to prison from time to time until he shall conform to the order of the said Court or Judge.

Certificate.

**22.** The Supreme Court or any Judge thereof may, by and with the consent of the majority in number and value of the creditors, grant to any person declared insolvent a certificate of insolvency and discharge, five days previous notice of the application having been given in the *Royal Gazette* and one other newspaper, and to the trustee or trustees; and in any case where such consent shall be refused, the insolvent may apply to

the Supreme Court, which may, upon hearing the parties, grant such certificate: Provided that such insolvent, whether his application be made to a Court or Judge, shall not have been guilty of any such acts as may, or if discovered at the time of the declaration of insolvency would, render him liable to imprisonment or punishment under this chapter; and provided he shall have made a full and true discovery, disclosure and delivery of his property and effects under his insolvency, and shall have conformed to the orders and directions of the Court or Judge touching the same, and shall have, if and when required, rendered such information and aid to the trustees, by way of proof or otherwise, in the discovering, collecting, and receiving the estate and effects of the insolvent estate, at the expense of the estate, as shall have been reasonably required by them. Such certificate shall be a release of any judgment recovered and a bar to any action or suit that may at any time thereafter be brought for any debt or liability due or owing at the time of his being declared insolvent, or to become due under any contract previously entered into: Provided, that if the insolvent shall have undergone punishment for any fraudulent or other acts punishable under this chapter, or if he has received the consent of the majority in number and value of his creditors, the Court or Judge, in their or his discretion, may grant him his certificate and final discharge in like manner as in other cases.

**23.** Nothing herein contained shall discharge an insolvent from rent coming due after such declaration of insolvency under any tenancy originating previously and continued by the insolvent subsequently to such declaration of insolvency.

### Privileged Creditors and Distribution of Estate.

**24.** When it shall be made to appear that the hirer or employer of any seaman, fisherman or other servant is insolvent or unable to pay his creditors one hundred cents in the dollar, such seaman, fisherman or other servant actually employed in catching, curing of fish or oil, and such person as shall have supplied bait to the hirer or employer aforesaid, and who shall be creditors for wages, shares or bait for the current season, shall upon all such fish and oil taken, cured or made by the hirer or employer aforesaid, or out of the produce or value thereof, if the same be in the possession of the hirer or employer, or of any other person aware of or privy to the hiring or employing of any such seaman, fisherman or other servant, or having notice of the claim of such seaman, fisherman or other servant, whether the same be accruing or due at or before the time of such other person receiving such fish or oil or the produce or value thereof, or before paying the hirer or employer for the same, be considered privileged creditors, and shall first be paid one hundred cents in the dollar, so far as such fish or oil, or the produce or value thereof, shall go.

**25.** Where such fish and oil shall be insufficient for the full payment of the wages or shares of all such seamen, fishermen, or other servants, or of the persons who shall supply bait as aforesaid, they shall be paid

their claims rateably in proportion to their respective wages, shares or bait money.

**26.** In the case of the supplying merchant, no seamen, fishermen or other servants than those engaged with the knowledge and consent of such supplying merchant, being a receiver, shall be privileged creditors in manner aforesaid, in regard to any supplying merchant, being such receiver, nor in regard to the fish or oil, or the produce or value thereof, in the hands of such receiver.

**27.** Any person who may be *bona fide* engaged or shipped in the place of any such seaman, fisherman or other servant who may during the voyage have been discharged, or have left, or deserted, or have died, or have been incapacitated by illness or other cause from continuing his service, shall be a privileged creditor in manner aforesaid, and shall be entitled to claim on the supplying merchant, being such receiver, for the period he may have served in such stead.

**28** Any defence which the hirer or employer could have made if the action had been taken against him by such seaman, fisherman or other servant, or supplier of bait, for such wages, share or bait money, shall be equally available for the receiver to make on the trial of any action brought against him by such seaman, fisherman or other servant or supplier of bait, for such wages, share or bait money, or the value of such fish and oil, or any part thereof as aforesaid: Provided that the receiver of the voyage, or any part of the produce or value of same, shall not be liable for the payment of the wages or share of such seaman, fisherman or other servant or supplier of bait, or any part thereof, unless it be proven on the trial that such receiver is liable under the provisions of this chapter: Provided that any shareman selling or lawfully disposing of his share of fish or oil, or any part thereof, may sue and recover payment for same from the purchaser thereof, according to the terms of his contract, before any stipendiary Justice or Court; and any shareman, fisherman or other servant may in like manner sue for and recover his wages or share from his hirer or employer, notwithstanding the provisions of this chapter.

**29.** To enable such seaman, fisherman or servant, or person supplying bait as aforesaid, to recover the amount of his wages, share or bait money from the receiver of such fish and oil, or the produce or value thereof, it shall not be necessary that the hirer or employer should have been formally declared insolvent; but it will be sufficient if it be made to appear on the trial of any action which such seaman, fisherman or other servant or supplier of bait may bring for money had and received, or for wages, against the said receiver, before any stipendiary Justice, Court of Sessions or other Court that the share, wages or bait money was due at the time of bringing such action, and that the said hirer or employer was then insolvent or unable to pay his creditors one hundred cents in the dollar.

**30.** If such seaman, fisherman, or other servant, or supplier of bait, has knowingly or wilfully colluded with or assisted the hirer or employer in disposing of his voyage otherwise than to his supplying merchant, such supplying merchant not being paid to the extent of his supplies over and above the unpaid wages or bait money at the time of the action being brought, such seaman, fisherman or other servant or supplier of bait, shall not be entitled to recover in any action brought against any receiver, being a supplying merchant.

**31.** Nothing herein contained shall prevent such seaman, fisherman or other servant, from recovering such share or wages from any person other than the supplying merchant who may have received such voyage or any part thereof, and who would be otherwise liable under this chapter.

**32.** Sealers who have put in or sold their shares of seals' pelts, skins or oil to the owners or outfitters of sealing ships, shall, in like manner with servants, under the twenty-fourth section, be preferential creditors upon the estates of such owners or outfitters, in the event of their insolvency. Sealers who have sold their shares of seals' pelts, skins or oil, to a vendee other than the owners or outfitters, aforesaid, shall rank in like manner upon the estate of such vendee in the event of his insolvency. In the cases provided for by this section, the seals' pelts, skins or oil, for which the preferable claim is given, must have been delivered to the owner, outfitter, or other vendee, within six months prior to the declaration of insolvency. Nothing in this section contained shall entitle sealers to claim for their share of seals' pelts, skins or oil, to which, according to the terms of their agreements, they may have forfeited their right; and in such case the persons entitled to the forfeiture shall be entitled to claim, as aforesaid, in their stead. Nothing in this section contained shall be construed to affect any custom as to set-off against shares of seals' pelts, skins or oil, of hirers' or employers' accounts.

**33.** The estates of persons declared insolvent shall, after the payment of costs and expenses, be distributed rateably amongst the creditors, except in the cases herein provided for.

**34.** In the distribution of the estate of any person declared insolvent, all wages earned by clerks and servants at any time within one year prior to the appointment of a trustee in insolvency, and also in the event of any receiver or supplying merchant being declared insolvent, any seaman, fisherman or other servant, or supplier of bait, as aforesaid, who may be a privileged creditor under the twenty-fourth section of this chapter, to the extent of his rateable proportion, as aforesaid, of the fish or oil, or the produce or value thereof, shall be privileged creditors, and shall be co-equally entitled to recover and receive one hundred cents in the dollar out of the estate and effects of the person declared insolvent. Any person who, but for a wrongful dismissal from service, would have been entitled to claim preferentially, and who shall obtain judgment for damages in any action for wrongful dismissal, within one year before the appointment

of a trustee in insolvency, or who, not having obtained such judgment before the appointment of such trustee, shall prove his claim for damages in such a manner as the Court or Judge shall direct, shall be entitled to claim preferentially for such damages, not exceeding one year's wages, and in the same manner as if such damages were wages actually earned.

**35**. Next after preferable payments provided for in the preceding sections of this chapter, all debts and claims due to the Crown or to the Government or revenues of this colony, shall form a prior claim upon the estate and effects of any person declared insolvent, and shall be first paid so far as such estates and effects will go; and all moneys deposited by or on account of the Newfoundland Savings' Bank in any bank or banking company, or received or collected by such bank or banking company, for or on account of the said Savings' Bank, shall constitute a Crown debt, and form a prior claim on such bank or banking company, and upon its property, estate and effects in the case of the insolvency of such bank or banking company, and may be sued for and recovered in the name of Her Majesty, or the Receiver General or Attorney General of this colony: Provided that nothing herein contained shall affect the provisions of the ninety-eighth section of chapter eight of these consolidated statutes, entitled "Of the Customs, Warehouses, Distilleries," etc."

**36**. After the payment of preferable claimants under the foregoing sections of this chapter, every creditor for supplies necessarily and *bona fide* furnished for the prosecution of the fishery during the current season, that is to say, at any time after the close of the last preceding season of the fishery, shall be a privileged creditor, and shall be paid one hundred cents in the dollar, as far as the insolvent estate will go.

### Insolvency of Deceased persons.

**37**. When any person shall die in this colony or elsewhere leaving estates and effects in this colony or in any place within the Government thereof, and such estates and effects shall not be sufficient to pay and satisfy all his just debts, the Supreme Court or any Judge thereof may, either in term or vacation, on the petition of the executor, administrator, or a creditor of such deceased person, to be made in writing and upon oath and laid before the said Court or any Judge thereof, by which it shall appear to the Court or said Judge before whom such statement shall be laid that the estate or effects of such deceased person are not sufficient to pay all his just debts, authorize the executor or administrator of such deceased person, or, if they shall see cause, any trustee or trustees whom they may appoint, to collect and to distribute the estate and effects amongst his creditors, according to the manner of distribution by law directed to be made in respect to the estates of persons declared insolvent, subject in all cases to the provisions of this chapter: Provided that nothing herein contained shall be construed to affect the right of any creditor of such deceased person to recover the full amount of such debts as may have been *bona fide* secured in the lifetime of such deceased person by mortgage or other legal

conveyance of any portion of the estate or effects of such deceased person, and not void under the foregoing provisions of this chapter; and also, that the like course shall be pursued with the estate and effects of any persons dying insolvent, where no executor or administrator thereof has been appointed or resides in this island, on the application of any creditor to the said Court or any Judge thereof, who may appoint trustees or receivers of such estates and effects, to realize and distribute the same as aforesaid, subject to the orders and control of the Court or Judge.

### Reference of Claims.

**38.** The Court or Judge acting under the provisions of this chapter may make any order of reference to the master or other person to investigate and report upon claims, accounts and other matters, whether on behalf of or against the insolvent estate; and the decision to be come to thereon shall be as binding between the parties as an action at law or suit in equity, and may be pleaded in bar of any other proceeding.

### Appeal.

**39.** Any person feeling himself aggrieved by the decision of a Judge in chambers or sitting alone in the Supreme Court, and proceeding under the provisions of this chapter, may have a re-hearing in manner provided by the fourth section of chapter fifty of these consolidated statutes, entitled "Of the Supreme Court and Procedure therein," upon such terms (if any) as the said Judge may impose; and the judgment on such re-hearing shall be enforced by the Supreme Court.

### Judge may make further orders.

**40.** In any case or matter within the provisions of this chapter in which the Court or a Judge may deem it necessary to make any rule or order, whether hereinbefore provided for or not, for the effectual carrying out of the provisions of this chapter, the Court or Judge may make such rule or order; and any person disobeying the same shall be deemed guilty of contempt, and may be proceeded against and punished therefor by the Court or Judge, either in term, in vacation or in chambers.

### Perjury.

**41.** Any person who, in his examination upon oath or affirmation, or who in any affidavit in any proceeding under this chapter, shall wilfully and corruptly give false evidence, or swear or affirm anything which shall be false, shall be deemed guilty of wilful and corrupt perjury and be liable to be indicted therefor, and upon conviction shall be liable to the penalties of wilful and corrupt perjury.

### Trial by Jury.

**42.** For the purpose of trying any question of fact arising under the eleventh section of this chapter, the Court or Judge may empanel a jury

according to the provisions of the laws now or hereafter to be in force for regulating trial by jury: provided that nothing herein contained shall prevent the Court or Judge from determining any questions of fact.

ARRANGEMENTS AND COMPOSITIONS.

**43.** At any time after petition filed, praying for a declaration of insolvency, and before the close or winding up of the estate of any insolvent, the Supreme Court or a Judge thereof may, on proof to its or his satisfaction that either before or since the filing of such petition an arrangement by liquidation or for a composition has been entered into by the debtor, and two-thirds in number and value of his creditors resident or having a house of business in Newfoundland, and of two-thirds of his creditors elsewhere, or of three-fourths of the whole of such creditors in number and value, make an order dissolving the proceedings in insolvency, or staying such proceedings, or the realization or winding up of the estate of the debtor, either altogether or for a limited time, on such terms and subject to such conditions as the Court or Judge may think fit, or from time to time determine; and all creditors shall be bound thereby.

**44.** Under the provisions of the foregoing section, the trustee in insolvency may be relieved in whole or in part, altogether or temporarily, from his place and responsibility; and it may be made part of the terms and conditions aforesaid that the person or persons to manage and supervise the estate of the debtor, and the debtor himself shall be liable to the order and direction of the Court or of the Judge during the carrying out of the liquidation or composition, or otherwise as the case may be.

**45.** It shall be lawful for any creditor, not being a party or consenting to any arrangement by liquidation or for a composition, under the provisions of the forty-third section, to show that the insolvent debtor has committed such act or acts as would render him liable to punishment under the eighth section of this chapter; and it shall be competent for the Court or Judge, if satisfied that such act or acts have been committed, to refuse to act upon any arrangement as aforesaid, and to proceed with the insolvency as if no such arrangement had been made, or to act upon such arrangement, and to punish the insolvent indebtor as if proceedings in insolvency had gone on in the ordinary way.

**46.** Notwithstanding any arrangement as aforesaid by liquidation or for composition, the Court or a Judge may order that the insolvent debtor shall, after fulfilment or other determination of the arrangement, remain liable for the unpaid balance or such other proportion, greater than the dividend under the arrangement, as the Court or Judge may then or afterwards order, of any debt which he the said insolvent debtor incurred or increased by any fraud or collusion, or whereof, before the date of the arrangement, he obtained forbearance by any fraud or collusion; provided that the defrauded creditor has not consented to the arrangement or composition, otherwise than by proving his debt or accepting dividends. The

provisions of sections forty-three and fifty-one of this chapter shall not affect such continuing liability.

**47.** If it appear to the Court or Judge, on satisfactory evidence, that an arrangement by liquidation or for composition cannot proceed without injustice or undue delay to the creditors or to the debtor, the Court or Judge may adjudge the debtor insolvent, and proceedings may be had accordingly.

**48.** The three preceding sections shall not apply to any arrangement by liquidation or for a composition existing before the twentieth day of May, one thousand eight hundred and eighty-two.

**49.** The rights of creditors preferential by law shall be prior claims, as in the case of distribution under proceedings in insolvency.

**50.** In calculating the two-thirds or three-fourths (as the case may be) in number and value of the creditors, as in the forty-third section provided, creditors whose debts do not exceed twenty dollars shall be reckoned in the value but not in the number; and such shall be the mode of calculation for any votes or consent of creditors which may become necessary under any orders of the Court or Judge under this chapter. Preferential creditors to the extent of their prior claims shall not count at all, unless they shall have consented to act as ordinary creditors for such preferential claims, or unless the whole estate be insufficient for payment of preferential debts.

**51.** An arrangement or composition acted upon by the Court or a Judge in manner aforesaid shall at any time, with leave of the Court or Judge, be equivalent to and have the same effect as a certificate of insolvency and discharge, and the facts may be certified in writing to the debtor by the Court or Judge or the clerk of the Court, under the seal of the Court, or otherwise, in a document to be called a certificate of composition or of arrangement, or otherwise as the case may be, and shall be conclusive evidence of the fact of discharge: provided that such documents and certificates in insolvency and of composition or arrangement shall be recorded in the office of the registrar of the Court before which the petitioner may be declared insolvent, or the composition or arrangement acted upon, and if before a Judge, in the office of the registrar of the Supreme Court.

### Parties secondarily liable.

**52.** Nothing in this chapter contained shall affect or operate to change the liability of any person secondarily liable to any creditor for the debts of the insolvent either as drawer or endorser of negotiable paper, or as guarantor, surety, or otherwise; nor of any partner or other person liable jointly or severally with the insolvent to such creditor for any debt; nor shall it affect any mortgage, lien, collateral or other security, held by any such creditor as security for any debt: Provided that the person secondarily

liable shall not be bound by the acts of such creditor unless with his assent, or unless such person shall have himself been declared insolvent or shall have assigned his property for the benefit of his creditors, or entered into a composition or arrangement.

### Distraint.

**53.** The landlord or other person to whom any rent is due from the debtor, at any time before or after the appointment of a trustee under a petition for declaration of insolvency of such debtor, may distrain upon the goods or effects of the debtor for the rent so due to him: Provided that if such distress for rent be levied after the appointment of a trustee as aforesaid, or after an arrangement or composition being acted upon by the Court or Judge in manner aforesaid, or if such distress having been levied before such appointment or before arrangement or composition being acted upon in manner aforesaid, the goods distrained shall not have been lawfully sold under the distress at the time of such appointment or arrangement or composition being acted upon as aforesaid, then such distress shall be available in case of declaration of insolvency or arrangement or composition acted upon as aforesaid only for one year's rent accrued due prior to the date of such appointment or of such arrangement or composition being acted upon as aforesaid, but the surplus shall be provable as an ordinary debt under insolvency, composition or arrangement aforesaid.

### Dividends.

**54.** When any rent or other payment falls due at stated periods, and the declaration of insolvency is ordered at any other than one of such periods, the person entitled may prove for a proportionate part thereof up to the declaration of insolvency, as if such rent or payment grew from day to day.

**55.** In a calculation and distribution of a dividend the trustee shall make provision for debts provable, appearing from the insolvent's statement or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs or to establish them if disputed, and also for debts provable in insolvency, the subject of claims not yet determined.

**56.** Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any moneys for the time being in the hands of the trustees, any dividend or dividends he may have failed to receive before such moneys are made applicable to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved, by reason that he has not participated therein.

**57**. Any creditor holding a specific security on the property of the insolvent or joint insolvent, if more than one or any part thereof, may, on giving up his security, prove for his whole debt. He shall be entitled to a dividend in respect to the balance due to him after realizing or giving credit for the value of his security, to be ascertained, if necessary, in manner to be prescribed by the Court or Judge. A creditor holding such security, and not complying with the foregoing conditions, shall be excluded from all share in any dividend.

JURISDICTION.

**58**. Notwithstanding that a petition for a declaration of insolvency may be directed to the Court or a Judge particularly named in said petition, it may, where expedient, by reason of the illness or absence of the Judge from the judicial district in which proceedings have been commenced, or other sufficient cause, be proceeded upon by any Judge of the Supreme Court; and any Judge other than the Judge before whom proceedings in insolvency may have been commenced, or when such proceedings have been commenced before the Court, may hear and adjudicate upon matters arising subsequently in the same insolvency and not already heard and determined by the first-named Judge or the Court The Supreme Court in St. John's shall have like powers where such proceedings have been commenced before a Judge or the Court on circuit.

**59**. A Judge hearing proceedings in insolvency shall be deemed a Court of Record, and may enforce his orders in the same manner.

# TITLE X.

## OF RIGHTS, LIABILITIES AND REMEDIES IN CERTAIN CASES.

## CHAPTER 84.

### Of certain Rights, Liabilities and Duties of Executors, Administrators and Trustees.


SECTION

1.—Executors may bring action for injuries to real estate of deceased. Action may be brought against executors for injuries done by deceased.

2.-3.—Executors may distrain. Limitation.

4.—Trustees, &c., may invest trust moneys in Savings' Bank

5.—Power of Supreme Court in respect of trust moneys and investments.

6.—Power of Court where all trustees, &c., do not concur.

7, 8, 9.—Exemption of Savings' Bank from liability. Indemnity.

10.—Protection of trustees, &c., acting *bona fide* under power of Attorney.

11.—Leases of testator or intestate. Liability of executor, &c., under assignment of lease. Distribution of estate, &c.

12.—Notice to creditors, distribution thereafter; protection of executor, &c.

SECTION

13.—Trustees, &c., may obtain opinion, advice, &c., of Supreme Court.

14.—Construction of instruments of trust; incorporated clause.

15.—Investments by trustees, &c., in what securities.

16.—Trustees of renewable leases, their duties, &c.

17.—Trusts for infants. Trustees may pay guardian, &c. Proviso.

18.—Receipts of trustees, sufficient discharge.

19.—This chapter subject to express provisions of instruments, and to limitations.

20.—Chapter not to empower trustees except to same extent as instruments containing similar powers.

21.—Rehearing by Supreme Court. Procedure.

22.-23.—Compensation to executors, &c.

24.—Costs.

25.—Executors, &c., may by leave of Court purchase estate.

26.—Supreme Court to make rules, &c.


**1** An action may be maintained by the executors or administrators of any person deceased, for any injury to the real estate of such estate of such person, committed in his life-time, for which an action might have been maintained by such person, so as such injury shall have been committed within six months before the death of such deceased person, and provided such action shall be brought within one year after the death of such person; and damages when recovered shall be part of the personal estate of such person; and an action may be maintained against the executors or administrators of any person deceased, for any wrong committed by him in his life-time to another, in respect to his property real or personal, so as such injury shall have been committed within six months before such person's death, and so as such action shall be brought within six months after such executors or administrators shall have taken upon themselves the administration of the estate and effects of such person; and the damages to be recovered in such action shall be payable in like order of administration, as the simple contract debts of such persons.

**2.** The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will for the arrearages

of rent due to such lessor or landlord in his life-time, in like manner as such lessor or landlord might have done in his life-time.

**3.** Such arrearages may be distrained for after the end or determination of such term or lease at will, in the same manner as if such term or lease had not been ended or determined: Provided that such distress be made within the space of six months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due. All the powers and provisions of the law relating to distress for rent shall be applicable to distresses made under the provisions of this chapter.

**4.** All trustees, executors, administrators, or other persons, having in their hands any money belonging to any trust whatsoever, or the major part of them, shall be at liberty, on filing an affidavit, shortly describing the instrument creating the trust, according to the best of their knowledge and belief, to pay the same, with the consent of the Supreme Court, into the Newfoundland Savings' Bank, which is hereby required to receive the same, to the account of the Supreme Court in the matter of the particular trust, (describing the same by the names of the parties as accurately as may be, for the purpose of distinguishing it,) in trust, to attend the order of the said Court. And all trustees, executors, administrators, or other persons, having any government debentures, stock in any company, bank, or other public or private company or corporation, whether domestic or foreign, standing in their names or in the names of any deceased persons, of whom they shall be personal representatives on any trusts whatsoever, or the major part of them, shall be at liberty to transfer or deposit such debentures or stocks into or in the name of the Newfoundland Savings' Bank, with the consent of the said Court, and in every such case the receipt of the said bank for the moneys so paid, or in the case of debentures or stock, the certificate of the proper officer of transfer or deposit of such debentures or stock, shall be a sufficient discharge to such trustees or other persons for the money so paid, or the debentures or stocks, and so transferred or deposited.

**5.** Such orders as shall seem fit shall be made from time to time by the Supreme Court aforesaid, in respect of the trust moneys, stocks, or debentures, so paid in, transferred or deposited as aforesaid, and for the investment and payment of any such moneys, or of any dividends, interest or bonuses on any such debentures or stocks, and for the administration of any such trusts generally, upon a petition to be presented in a summary way to the said Court by such parties as to the Court shall appear to be competent and necessary in that behalf; and service of such petition shall be made upon such persons within or without this colony, as the Court shall see fit and direct; and every order made on such petition shall have authority and effect, and shall be enforced and subject to re hearing and appeal in the same manner as if the same had been made in a suit regularly instituted on the equity side of the said Court; and if it shall appear that any such trust funds cannot be safely distributed without the institu-

tion of one or more suits, the said Court may direct any such suit or suits to be instituted.

**6.** If, upon any petition presented to the said Court, it shall appear at the hearing thereof that the major part of such trustees, executors, or administrators, are desirous of tranferring, paying, or delivering the said moneys, debentures or stocks, to the said Newfoundland Savings' Bank but that for any reason the concurrence of the other or others of them cannot be had, the Court may order and direct such transfer, payment or delivery to be made by the major part of such persons, without the concurrence of the other or others of them; and where any such moneys, debentures or stocks shall be deposited with any banker, broker, or other depository, the said Court may make such order for the payment or delivery of such moneys, debentures or stocks to the major part of such trustees, executors, or administrators, or other persons as aforesaid, for the purpose of being paid or delivered to the said Newfoundland Savings' Bank, as to the Court shall seem meet; and every transfer of any debenture or stocks, and every payment of money or delivery of securities in pursuance of any such order, shall be as valid and effectual as if the same had been made on the authority or by the act of all the persons entitled to the debenture or stock so transferred, or the moneys or securities so paid or delivered respectively, and shall fully protect and indemnify all persons acting in pursuance of such order.

**7.** In case of any order being made by the Supreme Court, by virtue of the preceding sections, for the transfer to, or deposit in, the Newfoundland Savings' Bank, by any trustees, executors, administrators or other persons, of any government debentures, stock in any water company, bank, or other public or private company or corporation, no liability or responsibility whatever shall attach to the said Newfoundland Savings' Bank in respect of the said debentures or stock, or in respect of the trusts to which the same may be subject.

**8** No order shall be made by the Supreme Court, by virtue of the preceding sections, for the transfer or deposit of such debentures or stock under which order the said Newfoundland Savings' Bank may be compelled to assume any liability or responsibility whatever respecting the said debentures or stock, or in respect of the trusts to which the same may be subject.

**9.** In all cases when any order may be made by the Supreme Court under the preceding sections for the paying of any money into the Newfoundland Savings' Bank, or the transfer to, or deposit in, the said bank of any debentures or stock, or relating to any moneys paid, or debentures or stock transferred or deposited, or to the trust estate to which the same may belong, the said bank shall be paid and indemnified out of such trust estate for all costs and expenses reasonably incurred by the said bank in and about the same; and all such costs and expenses incurred by the said bank shall be taxed against such trust estate as costs between solicitor and client.

**10.** No trustee, executor or administrator, making any payment or doing any act, *bona fide*, under or in pursuance of any power of attorney, shall be liable for the moneys so paid, or the act so done, by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power, provided that the fact of the death, or of the doing or such act as last aforesaid, at the time of such payment, or act *bona fide* done as aforesaid by such trustee, executor or administrator, was not known to him. Provided always that nothing herein contained shall in any manner affect or prejudice the right of any persons entitled to the money against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee, executor, or administrator, if the money had not been paid away under such power of attorney.

**11.** Where an executor or administrator, liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate, whose estate is being administered, shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residue of the said estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease, and the executor and administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having where necessary set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

**12.** Where an executor or administrator shall have given such or the like notices as in the opinion of the Supreme Court or a Judge thereof shall have been sufficient, for creditors and others to send in to the executors or administrators their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claim, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator, has then notice, and shall not be liable for the assets or any part thereof so distri-

buted to any person of whose claim such executor or administrator shall not have had notice at the time of the distribution of the said assets or part thereof, as the case may be; but nothing in the present chapter contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

**13.** Any trustee, executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to the Supreme Court or a Judge thereof for the opinion, advice or direction of such Court or Judge on any question respecting the management or administration of the trust, property or assets of any testator or intestate, notice of such application, with copy of the said petition, to be served upon, or the hearing thereof to be attended by, all persons interested in such application, or such of them as the said Court or Judge shall think expedient; and the trustee, executor or administrator, acting upon the opinion, advice or direction given by such Court or Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator in the subject matter of the said application: provided nevertheless, that this chapter shall not extend to indemnify any trustee, executor or administrator, in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such trustee, executor or administrator, shall have been guilty of any fraud, or wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

**14.** Every deed, will or other instrument creating a trust, either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following, that is to say: "That the trustee or trustees for the time being of the said deed, will or other instrument, shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, neglects, receipts or defaults, and not for those of each other, nor for any banker, broker or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stock, funds or securities, nor for any other loss unless the same happen through their own wilful default respectively."; and also that it shall be lawful for the trustees or trustee, for the time being, of the said deed, will or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument.

**15.** When a trustee, executor or administrator shall not, by the instrument creating his trust, be expressly forbidden to invest any trust fund on landed securities, or in the stock or debentures of this colony, or of the Harbor Grace Water Company, or in the debentures or stock of the Dominion of Canada, or other British colony, such trustee, executor

or administrator may invest such trust fund on such securities, stock or debentures, and he shall not be liable on that account as for a breach of trust, provided that such investment shall in other respects be reasonable and proper, and, in case of landed securities, be first approved of by a Judge of the Supreme Court. Under like circumstance; a trustee, executor or administrator may call in any trust fund invested in securities other than those aforesaid, and invest the same in manner aforesaid in any of the securities above mentioned, and from time to time at discretion, vary such investments for others of the same nature: provided always that no such original investments as aforesaid shall be called in, and no such change of investment, as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person, unless on order of the Supreme Court first had and obtained after notice to such person.

**16.** Trustees of any leaseholds for lives or years, which are renewable from time to time, either under any covenant or contract, may, if they shall in their discretion think fit, and such trustees, if thereunto required by any person having any beneficial interest present, or future or contingent in such leaseholds, shall use their best endeavours to obtain from time to time a renewed lease of the same hereditaments on reasonable terms, and for that purpose such trustees may, from time to time, make or concur in making such surrender of the lease for the time being subsisting, and do all such other acts as shall be requisite in that behalf: but this section is not to apply to any lease where, by the terms of the instrument creating the trust, the person in possession for his life, or other limited interest, is entitled to enjoy the same without any obligation to renew the lease or to contribute to the expense of renewing the same.

**17.** In all cases where any property is held by trustees, in trust for an infant, either absolutely or contingently on his attaining the age of twenty-one years, or on the occurrence of any event previously to his attaining that age, such trustees may, at their sole discretion, pay to the guardian (if any) of such infant, or otherwise apply, for or towards the maintenance or education of such infant, the whole or any part of the income to which such infant may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education or not, and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof, from time to time, in proper securities for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen: Provided always that such trustees may at any time, if it shall appear to them expedient, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

**18.** The receipts in writing of any trustee or trustees for any money payable to them or him, by reason or in the exercise of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof or from being answerable for any loss or misapplication thereof.

**19.** None of the powers or incidents hereby conferred or annexed to particular offices, estates or circumstances, shall take effect or be exercisable if it be declared in the deed, will, or other instrument creating such offices, estates, or circumstances, that they shall not take effect; and where there is no such declaration, then, if any variations or limitations of any of the powers or incidents hereby conferred or annexed are contained in such deed, will, or other instrument, such powers or incidents shall be exercisable, or shall take effect only subject to such variations or limitations.

**20.** Nothing in this chapter contained shall be deemed to empower any trustees or other persons to deal with or affect the estates or rights of any persons soever, except to the extent to which they might have dealt with or affected the estates or rights of such persons if the deed, will, or other instrument under which such trustees or other persons are empowered to act had contained express powers for such trustees or other persons so as to deal with or affect such estates or rights.

**21.** Any person feeling himself aggrieved by the decision of a Judge in Chambers, or sitting alone in the Supreme Court, and proceeding under the provisions of this chapter, may have a re-hearing in manner provided by the ninth section of chapter fifty of these Consolidated Statutes, entitled "Of the Supreme Court and Procedure therein," upon applying for the same by petition to the Court or Judge within twenty days after the decision complained of shall have been pronounced, and upon notice to the other party or parties, upon such terms as to costs, as to payment into Court of any money, as to the doing or not doing of any particular act or acts, as to the giving of security for the performance of such judgment, order or decree, as such Court or Judge shall direct.

**22.** Executors, administrators, or trustees, may, if the Supreme Court or any Judge thereof shall see fit, be allowed, over and above all actual and necessary expenses, such compensation for their services as may appear to such Court or Judge to be just and reasonable; and the said Court or Judge may further apportion such compensation among the executors, administrators, or trustees, in such way as may appear just and proper, according to the labor bestowed or responsibility incurred by them respectively.

**23.** When any provision shall be made by any will for specific compensation to an executor, or the deed or other instrument creating the trust makes provision for compensation to the trustee, the same shall be

deemed a full satisfaction for his services in lieu of any compensation as mentioned in the foregoing section, or his share thereof, unless such executor or trustee shall, by a declaration under his hand, filed in the said Court, renounce all claim to such specific legacy or compensation so provided. Such declaration to be filed before probate or administration taken, or accepting the office of trustee.

**24.** Costs of all proceedings under this chapter shall be in the discretion of the Court or Judge, and shall be taxed as nearly as applicable according to the practice on the equity side of the said Supreme Court.

**25.** Executors, administrators, and trustees, may, by leave of a Judge of the Supreme Court, purchase the estate and effects of the testator or intestate, or trust property, or any part thereof, subject in all cases to such directions as such Judge may make in relation to such sale and all matters incident thereto: Provided that no such sale shall be valid until confirmed by order of a Judge.

**26.** The said Supreme Court shall have power to make all rules and regulations necessary and proper for carrying the provisions of this chapter into effect; and such rules and regulations shall be published in the *Royal Gazette* of this colony, and posted in the office of the Chief Clerk of the said Court, for at least one month before they shall come into operation.

# CHAPTER 85.

## Of the Limitation of Personal Actions, and of Guarantees and Sureties.


SECTION
1.—Limitation of personal actions.
2.—Limitation after judgment reversed.
3.—Infants, feme covert, &c.
4.—What acknowledgment shall take a case out of the operation of the first section. Joint contractors.
5.—Acknowledgment by writing or by part payment.
6.—Meaning of term "beyond seas."
7.—Indorsements of payments.
8.—Debts alleged by way of set-off.
9.—Confirmation of promises made by infants.
10.—Consideration of guarantee.
11.—Rights of surety.
12.—Merchants' accounts.
13.—Effect of part payment by one contractor.


**1.** All actions for rent upon an indenture of demise, all actions upon any bond or other specialty, and all actions upon any recognizance; all actions upon any award where the submission is not by specialty, or for an escape, or for money levied on any *fieri facias;* all actions of trespass *quare clausum fregit*, actions of trespass, detinue, trover and replevin for taking away of goods or cattle; all actions of account and upon the case (other than such accounts as concern the trade of merchandize between merchant

and merchant, their factors or servants); all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrearages of rent; all actions or suits on the Admiralty side of the Supreme Court for seamen's wages, and all actions of assault, menace, battery, wounding and imprisonment, or any of them, and all actions for penalties, damages or sums of money given to the party grieved by any statute now or hereafter to be in force, shall be commenced and sued within the time and limitation hereinafter expressed, and not after; that is to say: the said actions for rent upon an indenture of demise, upon any bond or other specialty, actions upon recognizance, within twenty years after the cause of such actions, but not after; the said actions upon any award where the submission is not by specialty, or for an escape, or for money levied on any *fieri facias*, the said actions upon the case, (other than slander,) and the said actions for account, and the said actions for trespass, debt, detinue, trover and replevin for goods or cattle, and the said actions for trespass *quare clausum fregit*, and actions or suits on the Admiralty side of the Supreme Court for seamen's wages, within six years next after the causes of such actions or suits, and not after; and the said actions of trespass, of assault, menace, battery, wounding, imprisonment, or any of them, within four years next after the cause of such actions, and not after; and the said actions for penalties, damages, or sums of money by the party grieved, within two years after the cause of such action; and also the said actions upon the case for words, within two years next after the words spoken, and not after: Provided that nothing herein contained shall extend to any action given by any statute where the time for bringing such action is or shall be by any statute specially limited.

2. If in any of the said actions or suits judgment be given for the plaintiff, and the same be reversed by any Court of competent jurisdiction, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill, in all such cases the party plaintiff, his executors or administrators, as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed, or such judgment given against the plaintiff, and not after.

3. If any person who is or shall be entitled to any such action or suit, or to such *scire facias*, is, or shall be at the time of any such cause of action accrued, within the age of twenty-one years, a feme covert, *non compos mentis*, or beyond the seas, then such person may bring the same action, so as such person commences the same within such times after coming to or being of full age, discovert, of sound memory, or returned from beyond the seas, as any other person having no such impediment should, according to the provisions of this chapter, have done; and if any person against whom there shall be any such cause of action is, or shall be at the time such cause of action accrued, beyond the seas, then the person entitled to any such cause of action may bring the same against such person within such times respectively as are before limited after the return of such person from beyond the seas,

**4.** In any action for rent upon an indenture of demise, action upon any bond or other specialty, action upon any recognizance, and in all actions grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the first section of this chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing signed by the party chargeable thereby, or his agent; and when there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator, shall lose the benefit of the said first section of this chapter so as to be chargeable in respect or by reason only of any written acknowledgment or promise made or signed by any other or others of them: Provided that nothing herein contained shall alter or take away or lessen the effect of any payment of principal or interest made by any person whatever; and also, that in actions to be commenced against two or more such joint contractors, or executors or administrators, if it shall appear at the trial or otherwise, that the plaintiff, though barred by the first section of this chapter as to one or more of such joint contractors or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants by virtue of a new acknowledgment or promise, or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

**5.** If any acknowledgment shall have been made either by writing signed by the party, or the agent of the party liable by virtue of such indenture, specialty or recognizance, or liable in any action grounded upon any simple contract, or by part payment or part satisfaction, on account of any principal or interest being then due thereon, the person entitled to such action may bring his action for money remaining unpaid, and so acknowledged to be due, within such periods of time respectively after such acknowledgment by writing, or part payment, or part satisfaction as aforesaid, as are hereinbefore prescribed for commencing such action; or in case the person entitled to such action shall, at the time of such acknowledgment, be under such disability as aforesaid, or the party making such acknowledgment be at the time of making the same beyond the seas, then within such respective periods of time as aforesaid, after such disability shall have ceased, or the party shall have returned from beyond the seas, as the case may be; and the plaintiff in any such action may, by way of replication, state such acknowledgment, and that such action was brought within the time aforesaid in answer to a plea of this chapter.

**6.** By the term "beyond the seas," in this chapter, shall be meant any place beyond the limits of the Government of Newfoundland.

**7** No indorsement or memorandum of any payment witten or made upon any promissory note, bill of exchange, or any recognizance, bond,

specialty, or other writing, by or on behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of the said first section of this chapter.

8. This chapter shall apply to the case of any debt on any specialty or any simple contract or otherwise, which may now or at any time hereafter by law be alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise.

9. No action hereafter to be brought shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

10. No special promise to be made by any person to answer for the debt, default or miscarriage of another person, being in writing and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action, suit, or other proceeding, to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document.

11. Every person who, being surety for debt or duty of another, or, being liable with another for any debt, shall pay such debt or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security, which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty; and such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name of the creditor in any action, or other proceeding at law, or in equity, in order to obtain from the principal debtor, or any co-surety, co-contractor, co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have paid such debt or performed such duty; and such payment or performances so made by such surety shall not be pleadable in bar of any such action or other proceeding by him: Provided that no co-surety, co-contractor or co-debtor, shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last mentioned person shall be justly liable.

12. All actions of account, or for not accounting, and suits for such accounts as concern the trade of merchandize between merchant and mer-

chant, their factors or servants, or other persons, shall be commenced and sued within six years after the cause of such actions or suits; and no claim in respect of a matter which arose more than six years before the commencement of such action or suit shall be enforceable by action or suit by reason only of some other matter or claim, comprised in the same account, having arisen within six year next before the commencement of such action or suit.

**13**. When there shall be two or more co-contractors, or co-debtors whether bound or liable jointly only, or jointly and severally, or executors or administrators of any contractor, no such co-contractor, or co-debtor, executor or administrator, shall lose the benefit of the enactments mentioned in this chapter, so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money, by any others of such co-contractors or co-debtors, executors or administrators.

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# CHAPTER 86.

## Of the Limitation of Actions and Suits relating to Real Property, &c.


SECTION
1.—Meaning of words.
2.—Action to recover land or rent to be brought within twenty years after right accrued.
3.—Time when such right deemed to have accrued.
4.—Remainder-man, when to have new right.
5.—Reversioner to have new right.
6.—Administrator, how to claim.
7.—Tenancy at will.
8.—Tenancy from year to year.
9.—When rent reserved by lease in writing wrongfully received.
10.—Entry not to be deemed possession.
11.—Continual claim.
12.—Possession of one joint-tenant.
13.—Acknowledgment in writing equivalent to possession or receipt of rent.
14.—Infants, &c., allowed ten years from termination of disability or death.

SECTION
15.—No action to be brought beyond forty years after right accrued.
16.—Succession of disabilities.
17.—Meaning of term "beyond the seas."
18.—Bar of right to estate in possession to be bar to right to future estates.
19.—Suit in equity not to be brought after time limited for actions at law.
20.—Express trust.
21.—Fraud.
22.—Jurisdiction of equity.
23.—Mortgagor.
24.—When money charged on land and legacies to be deemed satisfied.
25.—Arrears of rent or interest.
26.—Right of party out of possession.
27.—Receipt of rent.


**1**. The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this chapter, except where the nature of the provision or the context shall exclude such construction, be interpreted as follows, that is to say: the word "land" shall extend to messuages and all other corporeal hereditaments whatsoever, and also to any share, estate or interest in them, or any of them, whether the same shall be a freehold or chattel interest, or held according to any other tenure; and the word "rent" shall extend to all services and suits for which a distress may be made, and to all annuities

and periodical sums of money charged upon or payable out of any land; and the person through whom another is said to claim shall mean any person by, through, or under, or by the act of whom, the person so claiming became entitled to the estate or interest claimed, as executor, administrator, legatee, husband, assignee, appointee, or otherwise.

**2.** No person shall make an entry or distress or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same. Provided any person entitled to or claiming under any mortgage of land may make an entry or bring an action at law, or suit in equity, to recover such land at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage although more than twenty years may have elapsed since the time at which the right to make such entry or bring such action or suit in equity shall have first accrued.

**3.** In the construction of this chapter, the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say: when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession, or discontinuance of possession, or at the last time at which any such profits or rent were or was so received; and when the person claiming such land or rent shall claim the estate or interest of such deceased person who shall have continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; and when the person claiming such land or rent shall claim in respect of an estate or interest in possession, granted, appointed, or otherwise assured by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under such instrument shall have been in possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt, by virtue of such instrument; and when the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest and no person shall have obtained the pos-

session or receipt of the profits of such land, or the receipt of such rent in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession; and when the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken.

**4**. When any right to make an entry or distress, or to bring an action to recover any land or rent by reason of any forfeiture or breach of condition, shall have first accrued in respect of any estate or interest in reversion or remainder, and the land or rent shall not have been recovered by virtue of such right, the right to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued in respect of such estate or interest in possession, as if no such forfeiture or breach of condition had happened.

**5**. A right to make an entry or distress, or an action to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion, at the time at which the same shall have become an estate or interest in possession, by the determination of any estate in respect of which such land shall have been held, or the profits thereof, or such rent shall have been received, notwithstanding the person claiming such land, or some person through whom he claims, shall, at any time previously to the creation of the estate which shall have determined, have been in possession or receipt of the profits of such land or in receipt of such rent.

**6**. For the purposes of this chapter, an administrator claiming the estate or interest of the deceased person, of whose chattels he shall be appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration.

**7**. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued either at the termination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined: Provided that no mortgagor or *cestui que trust* shall be deemed to be a tenant at will, within the meaning of this clause, to his mortgagee or trustee.

**8**. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled

subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

**9.** When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent by virtue of a lease in writing, by which a rent amounting to the yearly sum of four dollars or upwards shall be reserved, and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent subject to such lease, or of the person through whom he claims, to make an entry or distress, or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

**10.** No person shall be deemed to have been in possession of any land within the meaning of this chapter merely by reason of having made an entry thereon.

**11.** No continual or other claim upon or near any land shall preserve any right of making an entry or distress, or of bringing an action.

**12.** When any one or more of the several persons entitled to any land or rent as joint tenants or tenants in common shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them.

**13.** When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given, shall be deemed, according to the meaning of this chapter, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same; and the right of such last mentioned person, or any person claiming through him, to make an entry or distress, or bring an action to recover

such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment or the last of such acknowledgments, if more than one, was given.

**14.** If at the time at which the right of any person to make an entry, or distress, or bring an action to recover any land or rent shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned, that is to say: infancy, coverture, idiocy, lunacy, or unsoundness of mind, then such person, or the person claiming through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry, or distress, or bring an action to recover such land or rent at any time within ten years next after the time at which the person to whom such right shall have first accrued, as aforesaid, shall have ceased to be under any such disability, or shall have died, whichever of those two events shall have first happened, but the time within which any such entry may be made, or any such action may be brought, as aforesaid, shall not in any case be enlarged or extended by reason of the absence beyond seas during all or any part of that time of the person having the right to make such entry, or bring such action, or of any person through whom he claims.

**15.** No entry, distress, or action shall be made or brought by any person who, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within forty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years, or although the term of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired.

**16.** When any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent beyond the said period of twenty years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent, shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person.

**17.** By the term "beyond seas" in this chapter, shall be meant any place beyond the limits of the government of Newfoundland.

**18.** When the right of any person to make an entry or distress, or bring an action to recover any land or rent to which he may have been entitled, for an estate or interest in possession, shall have been barred by

the determination of the period hereinbefore limited which shall be applicable in such case, and such person shall at any time during the said period have been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress, or action shall be made or brought by such person, or any person claiming through him, to recover such land or rent, in respect of such other estate, interest, right or possibility, unless in the meantime such land or rent shall have been recovered by some person entitled to an estate, interest or right, which shall have been limited or taken effect after or in defeasance of such estate or interest in possession.

**19.** No person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which, by virtue of the provisions hereinbefore contained, he might have made an entry or distress, or brought an action to recover the same respectively, if he had been entitled at law to such estate, interest or right in or to the same as he shall claim therein in equity.

**20.** When any land or rent shall be vested in a trustee upon any express trust, the right of the *cestui que trust*, or any person claiming through him, to bring a suit against the trustee, or other person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this chapter, at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

**21.** In every case of concealed fraud the right of any person to bring a suit in equity for the recovery of any land or rent of which he or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered: Provided that nothing in this clause contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents, on account of fraud, against any *bona fide* purchaser for valuable consideration who has not assisted in the commission of such fraud, and who, at the time that he made the purchase, did not know and had no reason to believe that any such fraud had been committed.

**22.** Nothing in this chapter contained shall interfere with any rule or jurisdiction of Courts of equity in refusing relief on the ground of acquiescence or otherwise to any person whose right to bring a suit may not be barred by virtue of this chapter.

**23.** When a mortgagee shall have obtained the possession or receipt of the profits of any land, or the receipt of any rent, comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring a suit to redeem the mortgage but within twenty years next after

the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment of the title of the mortgagor, or of his right of redemption, shall have been given to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, in writing, signed by the mortgagee, or the person claiming through him; and in such case no such suit shall be brought but within twenty years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given; and when there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons; but where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money, or land, or rent, by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money, or land, or rent; and where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent, on payment with interest of the part of the mortgage money, which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

**24.** No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage judgment or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent; and in such case no such action or suit or proceeding shall be brought but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was given.

**25.** No arrears of rent or of interest in respect of any sum of money charged upon or payable out of the land or rent, or in respect of any

legacy, or any damages in respect of such arrears or rent or interest, shall be recovered by any distress, action, or suit, but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent: Provided, nevertheless, that where any prior mortgagee or other incumbrancer shall have been in possession of any land, or in receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years; and that nothing herein contained shall be construed to repeal or alter the provisions of the first section of the preceding chapter.

**26**. At the termination of the period limited by this chapter to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, action, or suit respectively, might have been made or brought within such period, shall be extinguished.

**27**. The receipt of the rent payable by any tenant from year to year, or other lessee, shall as against such lessee, or any other person claiming under him, (but subject to the lease,) be deemed to be the receipt of the profits of the land for the purposes of this chapter.

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# CHAPTER 87.

## Of the Liability of Employers for injuries to Workmen in their service.


SECTION
1.—Where employer liable in an action at the suit of employee.
2.—Cases where workmen not entitled to compensation.
3.—Amount of compensation recoverable.
4.—Notice of injury requisite; Action to be taken within six months; Proviso.
5.—Penalty to be deducted from compensation.
6.—Contents of notice of injury.
7.—Meaning of terms.
8.—Meaning of expression "workman."


**1**. Where personal injury is caused to a workman—

(1.) By reason of any defect in the condition of the ways, works, machinery or plant, connected with or used in the business of the employer; or

(2.) By reason of the negligence of any person, in the service of the employer, who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or

(3.) By reason of the negligence of any person, in the service of the employer, to whose orders or directions the workman, at the time of the injury, was bound to conform, and did conform, where such injury resulted from his having so conformed; or

(4.) By reason of the act or omission of any person, in the service of the employer, done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or

(5.) By reason of the negligence of any person in the service of the employer, who has the charge or control of any signal, points, locomotive engine or train upon a railway,—

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work.

**2.** A workman shall not be entitled under this chapter to any right of compensation or remedy against the employer in any of the following cases, that is to say:—

(1.) Under sub-section one, of section one, unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery or plant were in proper condition.

(2.) Under sub-section four, of section one, unless the injury resulted from some impropriety or defect in the rules, bye-laws or instructions therein mentioned: Provided that, where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law, by virtue of any Act of Parliament or by the Governor in Council of this colony, it shall not be deemed, for the purposes of this chapter, to be an improper or defective rule or bye-law.

(3.) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

3. The amount of compensation recoverable, under this chapter, shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment, and in the district in which the workman is employed at the time of the injury.

4. An action for the recovery, under this chapter, of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or in case of death, within twelve months from the time of death: Provided always, that in case of death, the want of such notice shall be no bar to the maintenance of such action, if the Judge shall be of opinion that there was reasonable excuse for such want of notice.

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, claiming by, under or through a workman, in repect of any cause of action, under this chapter, any penalty, or part of a penalty, which may have been paid, in pursuance of any other Act or law having force in this colony, to such workman, representatives or persons in respect of the same cause of action; and where an action has been brought, under this chapter, by any workman or the representatives of any workman, or any person claiming by, under or through such workman, for compensation in respect of any cause of action arising under this chapter, and payment has not previously been made of any penalty or part of a penalty under any other Act or law of force in this colony in respect of the same cause of action, such workman, representatives or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act or law in respect of the same cause of action.

6. Notice in respect of an injury, under this chapter, shall give the name and address of the person injured and shall state in ordinary language the cause of the injury, and the date at which it was sustained, and shall be served on the employer, or if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to, or at the residence or place of business of, the person on whom it is to be served.

The notice may also be served by post, by a registered letter, addressed to the person on whom it is to be served at his last known place of residence or place of business; and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons, corporate or unincorporate, the notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the Judge who tries the action arising from the injury mentioned in the notice, shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

**7.** For the purposes of this chapter, unless the context otherwise requires :—

The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence and who is not ordinarily engaged in manual labour.

The expression "employer" includes a body of persons, corporate or unincorporate.

**8.** In this chapter—

The expression "workman" does not include a domestic or menial servant, but means any person who being a labourer, servant in husbandry, journeyman artificer, handicraftsman, miner, railway servant, or otherwise engaged in manual labour, whether under the age of twenty-one years, or above that age, has entered into or works under a contract with an employer, whether the contract be express or implied, oral or in writing, and be a contract of service, or a contract personally to execute any work or labour.

# CHAPTER 88.

## Of the Liens of Mechanics and others.


SECTION

1.—Short Title.
2.—Construction.
3.—Agreement shall not deprive a person of lien.
4.—Mechanic to have lien for work and materials.
5.—How lien shall attach.
6.—Mechanic &c., also to have lien for wages.
7.—Owner may retain for thirty days 10 per cent.
8.—Lien by sub-contractors.
9.—Payments made in good faith shall discharge lien.
10.—Lien not to make owner liable for more than is payable by him.
11.—Persons furnishing materials to have a lien upon giving notice.
12.—Arbitration.
13.—Payment to operate as a discharge.
14.—Mode of arbitration.
15.—Property not to be removed during continuance of lien.
16.—Registration of claim of lien.
17.—A claim for wages may include claims of any number.
18.—Mode of registration.
19.—Person entitled to lien shall be deemed a purchaser.
20.—Time for registration.
21.—Time for registration.
22, 23.—Unregistered liens shall cease to exist.
24.—Time of expiry when no period of credit is stated in claim.
25.—Death of lien holder.
26.—Discharge of lien.
27.—Registration at cost of contractor.
28.—Proceedings to recover.
29.—Other cases.
30.—Any number of lien holders may join in one action.
31.—Duration of li for work upon chattel.


**1**. This chapter may be cited as "The Mechanics' Lien Act."

**2**. Where the following words occur in this chapter, or in the schedule thereto, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears:—

(1.) "Contractor" shall mean a person contracting with, or employed directly by the owner for the doing of work, or placing, or furnishing of machinery or materials for any of the purposes mentioned in this chapter

(2.) "Sub-contractor" shall mean a person not contracting with, or employed directly by the owner for the purposes aforesaid, but contracting with or employed by the "contractor," or under him by another "sub-contractor."

(3.) "Owner" shall extend to and include a person having any estate or interest in the lands upon or in respect of which the work is done, or materials or machinery are placed or furnished, at whose request and upon whose credit, or on whose behalf, or with whose consent in writing, or for whose direct benefit any such work is done, or materials or machinery placed or furnished, and all persons claiming under him whose rights are acquired after the work in respect of which the lien is claimed is commenced, or the materials or machinery furnished have been commenced to be furnished.

**3.** No agreement shall be held to deprive anyone otherwise entitled to a lien under this chapter, and not a party to the agreement, of the benefit of the lien, but the lien shall attach notwithstanding such agreement.

**4.** Unless he signs an express agreement to the contrary, every mechanic, machinist, builder, miner, laborer, contractor, or other person doing work upon or furnishing materials to be used in the construction, alteration, or repair of any building or erection, or erecting, furnishing or placing machinery of any kind in, upon, or in connection with any building, erection, or railway, or mine, shall, by virtue of being so employed or furnishing, have a lien for the price of the work, machinery or materials upon the building, erection, or railway, or mine, and the lands occupied thereby or enjoyed therewith, limited in amount to the sum justly due to the person entitled to the lien.

**5.** (1.) The lien shall attach upon the estate and interest of the owner, as defined by this chapter, in the building, erection, railway, or mine, upon or in respect of which the work is done, or the materials or machinery placed or furnished, and the land occupied thereby or enjoyed therewith.

(2.) In cases where the estate or interest charged by the lien is leasehold, the fee-simple may also, with the consent of the owner thereof, be subject to said charge; provided such consent is testified by the signature of such owner upon the claim of lien at the time of the registering thereof and duly verified.

(3.) In case the land, upon or in respect of which any work as aforesaid is executed, or labor performed, or upon which materials or machinery are placed, is encumbered by a prior mortgage or other charge, existing or created before the commencement of the work, or of the placing of the materials or machinery upon the land, such mortgage or other charge shall not bear priority over the lien to any greater extent than the sum by which the selling value of the land, with such work, material, or machinery thereon, exceeds the sum by which such selling value thereof has been actually increased by the improvement caused by such work, materials, or machinery being placed thereon; provided that the mortgagee or holder of such charge consents to such lien, charging the land, and testifies his consent thereto by executing the contract in respect of which the lien is claimed; and, in case such consent is not given, no such mortgage or other charge shall be affected by any subsequently acquired lien.

**6.** (1.) Without prejudice to any lien which he may have under the preceding sections, every mechanic, laborer, or other person who performs labor for wages upon the construction, alteration, or repairs of any building or erection, or in erecting or

placing machinery of any kind in, upon, or in connection with any building, erection, railway, or mine, shall, to the extent of the interest of the owner, have upon the building, erection, or mine, and the land occupied thereby or enjoyed therewith, a lien for such wages not exceeding the wages of twelve days, or a balance equal to his wages for twelve days, and, upon a railway or mine, thirty days.

(2.) The lien for wages given by this section shall attach (when the labor is in respect of a building, erection, railway, or mine on property belonging to the wife of the person at whose instance the work is done) upon the estate or interest of the wife in such property.

**7.** In all cases the owner shall, in the absence of a stipulation to the contrary, be entitled to retain for a period of thirty days after the completion of the contract, ten per centum of the price to be paid to the contractor.

**8.** In case the lien is claimed by a sub-contractor, the amount which may be claimed in respect thereof shall be limited to the amount payable to the contractor or sub-contractor, (as the case may be) for whom the work has been done, or the materials or machinery have been furnished or placed.

**9.** (1.) All payments up to ninety per centum of the price to be paid for the work, machinery or materials, as defined by section four of this chapter, made in good faith by the owner to the contractor, or by the contractor to the sub-contractor, or by one sub-contractor to another sub-contractor, before notice in writing by the person claiming the lien has been given to such owner, contractor, or sub-contractor, (as the case may be), of the claim of such person, shall operate as a discharge *pro tanto* of the lien created by this chapter; but this section shall not apply to any payment made for the purpose of defeating or impairing a claim to a lien existing or arising under this chapter.

(2.) A lien shall, in addition to all other rights or remedies given by this chapter, also operate as a charge to the extent of ten per centum of the price to be paid by the owner for the work, machinery or materials, as defined by section four of this chapter, up to thirty days after the completion of the work or the delivery of the materials in respect of which such lien exists, and no longer, unless notice in writing be given, as herein provided.

(3.) A lien for wages for twelve days, or thirty days, (as the case may be), or for a balance equal to the wages for such time, shall, to the extent of the said ten per centum of the price to be paid

to the contractor, have priority over all other liens under this chapter, and over any claim by the owner against the contractor for or in consequence of the failure of the latter to complete his contract.

**10.** Save as herein provided, the lien shall not attach so as to make the owner liable to a greater sum than the sum payable by the owner to the contractor.

**11.** All persons furnishing material to or doing labor for the person having a lien under this chapter, in respect of the subject of such lien, who notify the owner of the premises sought to be affected thereby within thirty days after such material is furnished or labor performed, of an unpaid account or demand against such lien-holder for such material or labor, shall be entitled, subject to the provisions of sections six and nine, to a charge therefor *pro rata* upon any amount payable by such owner under said lien; and if the owner thereupon pays the amount of such charge to the person furnishing material and doing labor as aforesaid, such payment shall be deemed a satisfaction *pro tanto* of such lien.

**12.** In case of a dispute as to the validity or amount of an unpaid account or demand, of which notice is given to the owner under the preceding section, the same shall be first determined by action in the proper Court in that behalf, or by arbitration in manner mentioned in section fourteen, at the option of the person having the unpaid account or demand against the lien-holder; and, pending the proceedings to determine the dispute, so much of the amount of the lien as is in question therein may be withheld from the person claiming the lien.

**13.** In case the person primarily liable to the person giving such notice as mentioned in section eleven, fails to pay the amount awarded within ten days after the award is made, the owner, contractor, or sub-contractor may pay the same out of any moneys due by him to the person primarily liable as aforesaid, on account of the work done, or materials or machinery furnished or placed, in respect of which the debt arose; and such payment, if made after an award (or if made without any arbitration having been previously had, or dispute existing, then if the debt in fact existed and to the extent thereof,) shall operate as a discharge *pro tanto* of the moneys so due, as aforesaid, to the person primarily liable.

**14.** (1.) In case a claim is made by a sub-contractor in respect of a lien to which he is entitled, and a dispute arises as to the amount due or payable in respect thereof, the same shall be settled by arbitration.

(2.) One arbitrator shall be appointed by the person making the claim, one by the person by whom he was employed, and a third arbitrator shall be appointed by the two so chosen.

(3.) The decision of the arbitrators, or a majority of them, shall be final and conclusive.

(4.) In case either of the parties interested in any such dispute refuses or neglects, within three days after notice in writing requiring him to do so, to appoint an arbitrator, or if the arbitrators appointed fail to agree upon a third, the appointment may be made by the Supreme Court or a Judge thereof.

**15.** During the continuance of a lien no portion of the property or machinery affected thereby shall be removed to the prejudice of the lien; and any attempt at such removal may be restrained by application to the Supreme Court or a Judge thereof.

**16.** (1.) A claim of lien applicable to the case may be registered in the office of the Registrar of Deeds, and shall set forth:—

(*a.*) The name and residence of the claimant, and of the owner of the property to be charged, and of the person for whom and upon whose credit the work is done, or materials or machinery furnished and the time or period within which the same was or was to be done or furnished.

(*b.*) The work done, or materials or machinery furnished.

(*c.*) The sum claimed as due, or to become due.

(*d.*) The description of the land to be charged.

(*e.*) The date of expiry of the period of credit agreed to by the lienholder for payment for his work, material or machinery, where credit has been given.

(2.) The claim may be in one of the forms given in the schedule to this chapter, and shall be verified by the affidavit of the claimant, or of his agent or assignee, having full knowledge of the matters required to be verified, and the affidavit of an agent or assignee shall state that he has such knowledge.

**17.** A claim for wages may include the claims of any number of mechanics, laborers, or other persons aforesaid who may chose to unite therein. In such case each claimant shall verify his claim by his affidavit, but need not repeat the facts set out in the claim; and an affidavit substantially in accordance with form 4 in the schedule to this chapter, shall be sufficient.

**18.** (1.) The Registrar, upon payment of his fee, shall register the claim, so that the same may appear as an encumbrance against the land therein described.

(2.) The fee for registration shall be ten cents a folio of ninety words; if several persons join in one claim, the Registrar shall have a further fee of twenty-five cents for every person after the first.

(3.) The Registrar shall copy in a registry book, to be called the "Mechanics' Lien Registry Book," any claim or affidavit, and he shall number each claim, and shall insert the same in the alphabetical indexes, with the like particulars as in other cases; and he may describe the nature of the instrument as "Mechanics' Lien."

**19.** Where a claim is so registered, the person entitled to a lien shall be deemed a purchaser *pro tanto*, and within the provisions of "The Registration of Deeds' Act"; but, except as herein otherwise provided, "The Registration of Deeds' Act" shall not apply to any lien arising under this chapter.

**20.** (1.) Where the lien is for wages under sections six or nine, the claim may be registered,—

(*a*.) At any time within thirty days after the last day's labor for which the wages are payable, or

(*b*.) At any time within thirty days after the completion of the construction, alteration, or repair of the building or erection, or after the erecting or placing of the machinery in or towards which respectively the labor was performed and the wages earned, but so that the whole period shall not exceed sixty days from the last day's labor aforesaid.

(2.) Such lien shall not be entitled to the benefit of the provisions of sections six and nine, after the said respective periods, unless the same is duly registered before the expiration of the said periods so limited.

(3.) Such lien shall have the same priority for all purposes after as before registration.

**21.** In other cases the claim of lien may be registered before or during the progress of the work, or within thirty days from the completion thereof, or from the supplying materials or placing the machinery.

**22.** Every lien which has not been duly registered under the provisions of this chapter shall absolutely cease to exist on the expiration of the time hereinafter limited for the registration thereof, unless in the meantime proceedings are instituted to realize the claim under the provisions of this chapter, and a certificate thereof (which may be granted by the Court or Judge in which or before whom proceedings are instituted) is duly registered in the office of the Registry of Deeds.

**23.** Every lien which has not been duly registered under the provisions of this chapter shall absolutely cease to exist after the expiration of ninety days after the work has been completed, or materials or machinery furnished, or wages earned, or the expiry of the period of credit, where such period is mentioned in the claim of lien filed, unless in the meantime

proceedings are instituted to realize the claim under the provisions of this chapter, and a certificate thereof (which may be granted by the Court or Judge in which or before whom proceedings are instituted) is duly registered as aforesaid.

**24.** If there is no period of credit, or if the date of expiry of the period of credit is not stated in the claim so filed, the lien shall cease to exist upon the expiration of ninety days after the work has been completed, or materials or machinery furnished, unless in the meantime proceedings shall have been instituted pursuant to section twenty-three of this chapter.

**25.** In the event of the death of a lien-holder, his right of lien shall pass to his personal representatives, and the right of a lien-holder may be assigned by any instrument in writing.

**26.**—A lien may be discharged by a receipt signed by the claimant or his agent, duly authorized in writing, acknowledging payment, and verified by affidavit and filed; such receipts shall be numbered and entered by the Registrar by a memorandum on the margin of the registry of the lien, and indexed. The fee for registering shall be twenty-five cents.

**27.** Where there is a contract for the execution of the work, as hereinbefore mentioned, the registration of all discharges of liens shall be at the cost of the contractor, unless a Court or Judge shall otherwise order.

**28.** (1.) Where the amount of the claims in respect of any lien is within the jurisdiction of the District Courts, proceedings to recover the same, according to the usual procedure of the said Courts, by judgment and execution, may be taken in the said Courts in the jurisdiction of which the land charged is situate; and the District Court Judge, where the amount of the lien is within his jurisdiction, may order a summons to issue and cite the parties before him, and may order the accounts to be taken, and all necessary enquiries to be made; and in default of payment may direct the sale of the estate and interest charged, and such further proceedings taken as the Judge directs.

(2.) Any conveyance under the signature of the District Court Judge shall be effectual to pass the estate or interest sold.

(3.) The fees and costs in all proceedings taken under this section shall be such as are payable in respect of the like or similar matters, according to the ordinary procedure of the Courts.

**29.** In cases other than those specified in the preceding section, the lien may be realised in the Supreme Court, and may be heard at any sitting of the said Court.

**30.** (1.) Any number of lien-holders may join in one action, and any action brought by a lien-holder shall be taken to be brought

on behalf of all the lien-holders of the same class, who shall have registered their liens before or within thirty days after the commencement of the action, or who shall within the said thirty days file in the proper office of the Court from which the writ issued a statement entitled in or referring to the said action of their respective claims.

(2.) In the event of the death of the plaintiff, or his refusal or neglect to proceed, any other lien-holder of the same class who has registered his lien or filed his claim, in the manner and within the time above limited for that purpose, may be allowed to prosecute the action on such terms as may be deemed just and reasonable.

(3.) In case of a sale of the estate and interest charged with the lien, the Court or Judge may direct the sale to take place at any time after one month from the recovery of judgment, and it shall not be necessary to delay the sale for a longer period than is requisite to give reasonable notice thereof.

(4.) The said Court or Judge may also direct the sale of any machinery, and authorize its removal.

(5.) Where judgment is given in favor of a lien, the Court or Judge may add to the judgment the costs of, and incidental to, registering the lien, as well as the costs of the action.

(6.) Where there are several liens under this chapter against the same property, each class of the lien-holders shall, subject to the provisions of sections five, nine and eleven, rank *pari passu* for their several amounts, and the proceeds at any sale shall, subject as aforesaid, be distributed amongst them *pro rata*, according to their several classes and rights, and they shall respectively be entitled to execution for any balance due to them, respectively, after said distribution.

(7.) Upon application to the District Courts in claims under fifty dollars, and to the Supreme Court in other cases, a Court or Judge may receive security or payment into Court, in lieu of the amount of the claim, and may thereupon vacate the registry of the lien.

(8.) The Court or Judge may annul the said registry upon any other ground.

(9.) In any of the cases mentioned in sub-sections seven and eight, the Court or Judge may proceed to hear and determine the matter of the said lien, and make such order as seems just; and in case the person claiming to be entitled to such lien has wrongfully refused to sign a discharge thereof, or without just cause claims a larger sum than is found by such Court or Judge to be due, the Court or Judge may order and adjudge him to pay costs to the other party.

**31.** (1.) Every mechanic, or other person, who has bestowed money, or skill and materials, upon any chattel or thing in the alteration or improvement of its properties, or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon such chattel or thing for the amount or value of the money or skill and materials bestowed, shall, while such lien exists, (the lien under this section shall be construed to have effect so long as the said chattel or thing shall remain in the possession or under the control of such mechanic or other person), but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid, have the right, in addition to all other remedies provided by law, to sell the chattel or thing in respect of which the lien exists, on giving one week's notice by advertisement in a newspaper published in the district in which the work was done; or in case there is no newspaper published in such district, then in the newspaper published nearest thereto, stating the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer or person employed to sell the same, and leaving a like notice in writing at the last or known place of residence (if any) of the owner.

(2.) Such mechanic or other person shall apply the proceeds of the sale in payment of the amount due to him, and the costs of advertising and sale, and shall, upon application, pay over any surplus to the person entitled thereto.

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## SCHEDULE.

### Form 1. — Claim of Lien.

A. B., (name of claimant) of (here state residence of claimant), (if so, as assignee of, stating name and residence of assignor), under the "Mechanics' Lien Act," claims a lien upon the estate of (here state the name and residence of owner of the land upon which the lien is claimed) in the undermentioned land, in respect of the following work (or materials); that is to say, (here give a short description of the nature of the work done, or materials furnished, and for which the lien is claimed), which work was (or is to be) done (or materials were furnished) for (here state the name and residence of the person upon whose credit the work is done or materials furnished) on or before the day of .

The amount claimed as due (or to become due) is the sum of $ ,

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration):—

When credit has been given, insert:—The said work was done (or materials furnished) on credit, and the period of credit agreed to expired (or will expire) on the day , 18 .

Dated at , this day of , A. D. 18 .

(Signature of Claimant.)

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FORM 2.—CLAIM OF LIEN FOR WAGES.

A. B., (name of claimant) of (here state residence of claimant) (if so, as assignee of, stating name and residence of assignor) under the "Mechanics' Lien Act," claims a lien upon the estate of (here state the name and residence of the owner of land upon which the lien is claimed), in the undermentioned land, in respect of day's work performed thereon while in the employment of (here state the name and residence of the person upon whose credit the work was done), on or before the day of .

The amount claimed as due is the sum of $ .

The following is the description of land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated at , this day of , 18 .

(Signature of Claimant.)

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FORM 3.—CLAIM OF LIEN FOR WAGES BY SEVERAL CLAIMANTS.

The following persons, under the "Mechanics' Lien Act," claim a lien upon the estate of (here state the name and residence of the owner of land upon which the lien is claimed) in the undermentioned land, in respect of wages for labor performed thereon, while in the employment of (here state name and residence, or names and residences of employers of the several persons claiming the lien):—

| | | | | |
|---|---|---|---|---|
| A. B., of | (residence), | $ | for | day's wages. |
| C. D., of | " | $ | for | day's wages. |
| E. F., of | " | $ | for | day's wages. |

The following is a description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated , this day of , 18 .

(Signatures of several Claimants.)

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FORM 4.—AFFIDAVIT VERIFYING CLAIM.

I, A. B, named in the above (or annexed) claim, make oath and say that the said claim is true, (or, that the said claim, so far as it relates to me, is true).

Or, we, A. B. and C. D, named in the above (or annexed) claim, make oath and say, and each for himself saith that the claim, so far as it relates to him, is true.

(Where affidavit is made by agent or assignee a clause must be added to the following effect:—I have full knowledge of the facts set forth in the above (or annexed) claim).

Sworn, &c.

Or, the said A. B. and C. D. were severally sworn before me, &c.

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# CHAPTER 89.

## Of Compensation to the families of Deceased Persons, when death occasioned by negligence.

SECTION

1.—An action maintainable against persons causing death through neglect, &c., notwithstanding death of injured person.
2.—Action, for whose benefit and by whom to be brought.
3.—Where no action brought within six months by executor of person killed, then action may be brought by person beneficially interested in result of action.
4.—Damages given by jury to be divided as jury shall find and direct; money paid into Court may be paid in one sum without specifying shares; if not accepted, defendant entitled to verdict; limitation of action.
5.—Plaintiff to deliver full particulars of claim.
6.—Construction of words.

**1.** Whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

2. Every such action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased.

3 If, and so often as, it shall happen, at any time or times hereafter, in any of the cases in the first section of this chapter intended and provided for, that there shall be no executor or administrator of the person deceased, or that there being no executor or administrator, no such action as in the said section mentioned shall, within six calendar months after the death of such deceased person as therein mentioned, have been brought by and in the name of his or her executor or administrator, then and in every such case, such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been if it had been brought by and in the name of such executor or administrator, and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure as nearly as may be as if it were brought by and in the name of such executor or administrator.

4. In any action brought under the provisions of this chapter the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties, respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, in such shares as the jury by their verdict shall find and direct: Provided, that it shall be sufficient, if the defendant is advised to pay money into Court, that he pay it as a compensation in one sum to all persons entitled under this chapter for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury, and if the said sum be not accepted and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue: Provided also, that not more than one action shall lie for and in respect of the same subject matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

5. In every such action brought by and in the name of the executor or administrator of the person deceased, the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought; and in all actions brought under the provisions of this chapter the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the nature of the claim in respect of which damages shall be sought to be recovered,

6. The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings

are not excluded by the context or by the nature of the subject matter, that is to say: the word "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter.

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# CHAPTER 90.

## Of Trespasses by Cattle.

SECTION 1.—Plaintiff, in action for trespass by Cattle, to prove sufficient fencing; Proviso; Chapter not to apply in case of contract. 2.—Definition of Cattle.

**1.** In any action, complaint, prosecution, or other proceeding that may hereafter be brought, made, or instituted, for or in respect of any damage or injury done or caused by cattle breaking into or trespassing upon land, or destroying or damaging the crops or products thereof, the tenant or owner of such land shall not be entitled to recover, nor shall the owner or party in possession of such cattle be liable to pay or forfeit any damages or fine for such damage, nor be liable to any other punishment, unless it shall be proven, upon the trial or hearing of such action, complaint, prosecution, or other proceeding, that the land or property so trespassed upon, or broken into, was enclosed by a good and substantial fence, and that such cattle effected an entry upon such land by breaking down, removing, or leaping over such fence: Provided that this chapter shall not be construed to affect any existing agreements or covenants relating to boundary fences.

**2.** "Cattle," in this chapter, shall be construed to mean cows, bullocks, horses and sheep.

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# CHAPTER 91.

## Of Landlords' Taxes.

SECTION 1.—Landlords' taxes to be paid by landlord.

**1.**—Notwithstanding the provisions of any covenant, clause or agreement in any lease, or in any agreement for a lease, made after the thirteenth day of May, A.D. 1887, all rates, taxes, assessments and impositions, which by any act of the Legislature or by any Board which now is or may hereafter be created, and which is or may be authorized to impose or levy rates, taxes or assessments shall be declared to be landlords' taxes, shall be payable by the landlord, and in no case shall the tenant be liable therefor.

# TITLE XI.

## OF TRADE AND COMMERCE.

## CHAPTER 92.

### Of the Recovery and Rate of Interest.

SECTION 1.—Interest at six per cent may be charged on sums or debts due under written contracts. 2.—Interest from insolvent estates.

**1.** Upon all debts or sums certain, payable at a certain time or otherwise the jury on the trial of any issue or on any inquisition of damages may allow interest to the creditor at a rate not exceeding six dollars for the forbearance of one hundred dollars for a year, and so after that rate for a greater or less sum or for a longer or shorter time from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument, at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment: Provided that interest at the rate of six dollars per centum per annum as aforesaid shall be payable in all cases arising in this colony in which interest is now payable in law.

**2.** No claim for interest, exceeding six dollars per centum per annum, shall be recoverable against any insolvent estate in this colony.

## CHAPTER 93.

### Of Bills of Exchange, Cheques, and Promissory Notes.


SECTION

1.—Interpretation of terms.
2.—Bill of Exchange defined.
3.—Inland and foreign Bills.
4.—Effect where different parties to Bill are the same person.
5.—Address of drawee.
6.—Certainty required as to payee.
7.—What Bills are negotiable.
8.—Sum payable.
9.—Bill payable on demand.
10.—Bill payable at a future time.
11.—Omission of date in Bill payable after date.
12.—Ante-dating and post-dating.
13.—Computation of time of payment.
14.—Case of need.
15.—Optional stipulations by drawer or indorser.
16.—Definition and requisites of acceptance.
17.—Time for acceptance.
18.—General and qualified acceptances.
19.—Inchoate instruments.
20.—Delivery.
21.—Capacity of parties.

SECTION
22.—Signature essential to liability.
23.—Forged or unauthorized signature.
24.—Procuration signatures.
25.—Person signing as agent or in representative capacity.
26.—Value, and holder for value.
27.—Accommodation Bill or party.
28.—Holder in due course.
29.—Presumption of value and good faith.
30.—Negotiation of Bill.
31.—Requisites of a valid indorsement.
32.—Conditional indorsement.
33.—Indorsement in blank and special indorsement.
34.—Restrictive indorsement.
35.—Negotiation of overdue or dishonored Bill.
36.—Negotiation of Bill to party already liable thereon.
37.—Rights of the holder.
38.—When presentment for acceptance is necessary.
39.—Time for presenting Bill payable after sight.
40.—Rules as to presentment for acceptance, and excuses for non-presentment.
41.—Non-acceptance.
42.—Dishonor by non-acceptance and its consequences.
43.—Duties as to qualified acceptances.
44.—Rules as to presentment for payment.
45.—Excuses for delay or non-presentment for payment.
46.—Dishonor by non-payment.
47.—Notice of dishonor and effect of non-notice.
48.—Rules as to notice of dishonor.
49.—Excuses for non-notice and delay.
50.—Noting or protest of Bill.
51.—Duties of holder as regards drawee or acceptor.

SECTION
52.—Funds in hands of drawee.
53.—Liability of acceptor.
54.—Liability of drawer or indorser.
55.—Stranger signing Bill liable as indorser.
56.—Measure of damages against parties to dishonored Bill.
57.—Transferor by delivery and transferee.
58.—Payment in due course.
59.—Banker paying demand draft whereon indorsement is forged.
60.—Acceptor, the holder at maturity.
61.—Express waiver.
62.—Cancellation.
63.—Alteration of Bill.
64.—Acceptance for honor *supra* protest.
65.—Liability of acceptor for honor.
66.—Presentment to acceptor for honor.
67.—Payment for honor *supra* protest.
68.—Holder's right to duplicate of lost Bill.
69.—Action on lost Bill.
70.—Rules as to sets.
71.—Rules where laws conflict.
72.—Cheque defined.
73.—Presentment of check for payment.
74.—Revocation of banker's authority.
75.—Promissory note defined.
76.—Delivery necessary.
77.—Joint and several notes.
78.—Note payable on demand.
79.—Presentment of note for payment.
80.—Liability of maker.
81.—Application of Part II. to notes.
82.—Good faith.
83.—Signature.
84.—Computation of time.
85.—When noting equivalent to protest.
86.—Protest when Notary not accessible
87.—Saving clause.

## PART I.

### PRELIMINARY.

**1.** In this chapter, unless the context otherwise requires:—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Banker" includes a body of persons, whether incorporated or not, who carry on the business of banking.

"Insolvent" includes any person whose estate is vested in a trustee or assignee, under the law for the time being in force relating to insolvency.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "Note" means promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means indorsement completed by delivery.

"Issue" means the first delivery of a bill or note complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

"Colony" signifies Newfoundland and its dependencies.

## PART II.

### Bills of Exchange.—Form and Interpetation.

**2.** (1.) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.

(2.) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3.) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount; or (*b*) a statement of the transaction which gives rise to the bill, is unconditional.

(4.) A bill is not invalid by reason:

(*a*.) That it is not dated.

(*b*.) That it does not specify the value given, or that any value has been given therefor.

(*c*.) That it does not specify the place where it is drawn, or the place where it is payable.

**3.** (1.) An inland bill is a bill which is, or on the face of it purports to be (*a*) both drawn and payable within the colony, or (*b*) drawn within the colony upon some person resident therein. Any other bill is a foreign bill.

(2.) Unless the contrary appear on the face of the bill, the holder may treat it as an inland bill.

**4.** (1.) A bill may be drawn payable to, or to the order of the drawer; or it may be drawn payable to or to the order of the drawee.

(2.) Where, in a bill, drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or as a promissory note.

**5.** (1.) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2.) A bill may be addressed to two or more drawees, whether they are partners or not, but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

**6** (1.) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein, with reasonable certainty.

(2.) A bill may be made payable to two or more payees, jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3.) Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.

**7.** (1.) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2.) A negotiable bill may be payable either to order or to bearer.

(3.) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4.) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should be transferable.

(5.) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

**8.** (1.) The sum payable by a bill is a sum certain within the meaning of this chapter, although it is required to be paid:

(*a.*) With interest.

(*b.*) By stated instalments,

(*c.*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(*d.*) According to an indicated rate of exchange, or according to a rate of exchange, to be ascertained as directed by the bill.

(2.) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3.) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof.

**9.** (1.) A bill is payable on demand:

(*a.*) Which is expressed to be payable on demand, or at sight, or on presentation; or

(*b.*) In which no time for payment is expressed.

(2.) Where a bill is accepted or endorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so endorses it, be deemed a bill payable on demand.

**10.** A bill is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable:

(1.) At a fixed period after date or sight.

(2.) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

(3.) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

**11.** Where a bill, expressed to be payable at a fixed period after date, is issued undated, or where the acceptance of a bill, payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that, (1) where the holder in good faith and by mistake inserts a wrong date; and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

**12.** (1.) Where a bill, or an acceptance, or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2.) A bill is not invalid by reason only that it is anti-dated or post-dated, or that it bears date on a Sunday.

**13.** Where a bill is not payable on demand, the day on which it falls due is determined as follows:

(1.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace; provided that

*(a.)* When the last day of grace falls on Sunday, Good Friday, Christmas Day, the Queen's Birth-day, or the day appointed to be kept in its place; any day appointed by proclamation of the Governor as a public fast or thanksgiving day, public holiday, New Year's Day, or the day after Christmas Day, and the day after New Year's Day, when these days fall on Sundays, the Bill is payable and due on the succeeding business day.

(2.) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and including the day of payment.

(3.) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance, if the bill be accepted and from the date of noting or protest, if the bill be noted or protested for non-acceptance, or for non-delivery.

(4.) The term "month" in a bill, means calendar month.

**14.** The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may think fit.

**15.** The drawer of a bill and any indorser may insert therein an express stipulation:

(1.) Negativing or limiting his own liability to the holder;

(2.) Waiving, as regards himself, some or all of the holder's duties.

**16.** (1.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2.) An acceptance is invalid unless it complies with the following conditions, namely:

*(a.)* It must be written on the bill, and signed by the drawee. The mere signature of the drawee, without additional words, is sufficient.

*(b.)* It must not express that the drawee will perform his promise by any other means than the payment of money.

**17.** A bill may be accepted:

(1.) Before it has been signed by the drawer, or while otherwise incomplete.

(2.) When it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment.

(3.) When a bill, payable after sight, is dishonored by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

**18.** (1.) An acceptance is either *(a)* general, or *(b)* qualified.

(2.) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular, an acceptance is qualified which is:

*(a.)* Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated.

*(b.)* Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

*(c.)* Local, that is to say, an acceptance to pay only at a particular specified place.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

*(d.)* Qualified, as to time.

*(e.)* The acceptance of some one or more of the drawees, but not of all.

**19.** (1.) Where a simple signature on a blank paper is delivered by the signer, in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer or the acceptor, or an indorser, and in like manner when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

(2.) In order that any such instrument, when completed, may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact. Provided, that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been

filled up within a reasonable time and strictly in accordance with the authority given.

**20.** (1.) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable until delivery of the instrument, in order to give effect thereto: Provided that, when an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of the person entitled to the bill, that he has accepted it, the acceptance then becomes complete and irrevocable.

(2.) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

*(a.)* In order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be;

*(b.)* May be shewn to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the bill; but if the bill be in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed.

(3.) Where a bill is no longer in the possession of a party who has signed it as a drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

### Capacity and Authority of Parties.

**21.** (1.) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract; provided, that nothing in this section shall enable a corporation to make itself liable as a drawer, acceptor, or indorser, of a bill, unless it is competent to it so to do under law for the time being in force relating to corporations.

(2.) Where a bill is drawn or indorsed by an infant, minor or corporation, having no capacity or power to incur liability on a bill, the drawing or endorsement entitles the holder to receive payment of the bill and to enforce it against any other party thereto.

**22.** No person is liable as drawer, indorser or acceptor of a bill who has not signed it as such. Provided that

(1.) Where a person signs a bill in a trade or an assumed name, he is liable thereon as if he had signed it in his own name:

(2.) The signature of a name of a firm is equivalent to the signature, by the person so signing, of the names of all persons so liable as partners in that firm.

**23.** Subject to the provisions of this chapter, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority: provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

**24.** A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

**25.** (1.) Where a person signs a bill as drawer, indorser or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent or as filling a representative character does not exempt him from personal liability.

(2.) In determining whether a signature on a bill is that of the principal or that of the agent, or by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

### The Consideration for a Bill.

**26.** (1.) Valuable consideration for a bill may be constituted by:

(*a.*) Any consideration sufficient to support a simple contract;

(*b.*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time.

(2.) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor, and all parties to the bill who became parties prior to such time.

(3.) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

**27.** (1.) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2.) An accommodation party is liable on the bill to a holder for value, and it is immaterial whether, when such holder took

the bill, he knew such party to be an accommodation party or not.

**28.** (1.) A holder in due course is a holder who has taken a bill complete and regular on the face of it, under the following conditions, namely:

(*a.*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

(*b.*) That he took the bill in good faith, and for value, and that, at the time the bill was negotiated to him, he had no notice of any defect in the title of the person who negotiated it.

(2.) In particular, the title of a person who negotiates a bill is defective, within the meaning of this chapter, when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3.) A holder, (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor, and all parties to the bill, prior to that holder.

**29.** (1.) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

(2.) Every holder of a bill is *prima facie* deemed to be a holder in due course, but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force or fear, or illegality, the burden of proof is shifted, unless and until the holder proves that subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

### Negotiation of Bills.

**30.** (1.) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2.) A bill payable to bearer is negotiated by delivery.

(3.) A bill payable to order is negotiated by the indorsement of the holder, completed by delivery.

(4.) Where the holder of a bill payable to his order transfers it for value, without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee,

in addition, acquires the right to have the indorsement of the transferor.

(5.) Where any person is under obligation to indorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability.

**31**. An indorsement, in order to operate as a negotiation, must comply with the following conditions, namely:

(1.) It must be written on the bill itself, and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient. An indorsement written on an allonge, or on a "copy" of a bill, issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself.

(2.) It must be an indorsement of the entire bill, a partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees, severally, does not operate as a negotiation of the bill.

(3.) Where a bill is payable to the order of two or more payees or indorsees, who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

(4.) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature.

(5.) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6.) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

**32**. Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid, whether the condition has been fulfilled or not.

**33**. (1.) An indorsement in blank specifies no indorsee, and a bill so endorsed becomes payable to bearer.

(2.) A special indorsement specifies the person to whom or to whose order the bill is to be payable.

(3.) The provisions of this chapter relating to a payee apply, with the necessary modifications, to an indorsee, under a special indorsement.

(4.) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement, by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

**34.** (1.) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof; as, for example, if a bill be indorsed "pay D. only," or "pay D. for the account of X.," or "pay D. or order for collection."

(2.) A restrictive indorsement gives the indorsee the right to receive payment of the bill, and to sue any party thereto that his endorser could have sued, but gives him no power to transfer his rights as indorsee, unless it expressly authorizes him to do so.

(3.) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee, under the restrictive indorsement.

**35.** (1.) Where a bill is negotiable in its origin, it continues to be negotiable until it has been *(a)* restrictively indorsed; or *(b)* discharged by payment or otherwise.

(2.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from which he took it had.

(3.) A bill payable on demand is deemed to be overdue, within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4.) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5.) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour, takes it subject to any defect of title attaching thereto at the time of dishonour; but nothing in this sub-section shall affect the rights of a holder in due course.

**36.** Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this chapter, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

**37.** The rights and powers of a holder of a bill are as follows:

(1.) He may sue on the bill in his own name.

(2.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill.

(3.) Where his title is defective, *(a)* if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and *(b)* if he obtains payment of the bill, the person who pays him, in due course, gets a valid discharge for the bill.

GENERAL DUTIES OF THE HOLDER.

**38.** (1.) Where a bill is payable after sight, presentment for acceptance is necessary, in order to fix the maturity of the instrument.

(2.) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.

(3.) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4.) Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawee or endorsers.

**39.** (1.) Subject to the provisions of this chapter, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2.) If he do not do so, the drawer, and all indorsers prior to that holder, are discharged.

(3.) In determining what is a reasonable time, within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

**40.** (1.) A bill is duly presented for acceptance which is presented in accordance with the following rules:

*(a.)* The presentment must be made by or on behalf of the holder to the drawee, or to some person authorized to accept or refuse

acceptance on his behalf, at a reasonable hour on a business day, and before the bill is overdue.

(*b.*) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only.

(*c.*) Where the drawee is dead, presentment may be made to his personal representative.

(*d.*) Where the drawee is insolvent, presentment may be made to him or to his trustee, or his assignee.

(*e.*) Where authorized by agreement or usage, a presentment through the post office is sufficient.

(2.) Presentment in accordance with these rules is excused, and a bill may be treated as dishonored by non-acceptance—

(*a.*) Where the drawee is dead or insolvent, or is a fictitious person, or a person not having capacity to contract by bill.

(*b.*) Where, after the exercise of reasonable diligence, such presentment cannot be effected.

(*c.*) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3.) The fact that the holder has reason to believe that the bill on presentment will be dishonoured, does not excuse presentment.

**41**. (1.) When a bill is duly presented for acceptance, and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

**42**. (1.) A bill is dishonoured by non-acceptance,—

(*a.*) When it is duly presented for acceptance, and such an acceptance as is prescribed by this chapter is refused, or cannot be obtained ; or

(*b.*) When presentment for acceptance is excused, and the bill is not accepted.

(2.) Subject to the provisions of this chapter, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

**43** (1.) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance.

(2.) Where a qualified acceptance is taken, and the drawer or indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill. The provisions of this sub-section do not apply to a partial acceptance whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3.) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not, within a reasonable time, express his dissent to the holder, he shall be deemed to have assented thereto.

**44.** Subject to the provisions of this chapter, a bill must be duly presented for payment. If it be not so presented, the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:

(1.) Where a bill is not payable on demand, presentment must be made on the day it falls due.

(2.) Where the bill is payable on demand, then, subject to the provisions of this chapter, presentment must be made within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable. In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3.) Presentment must be made by the holder, or by some person authorized to receive payment on his behalf, at a reasonable hour on a business day, at the proper place, as hereinafter defined, either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can be found there.

(4.) A bill is presented at the proper place:

(*a*.) Where a place of payment is specified in the bill, and the bill is there presented.

(*b*.) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.

(*c*.) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of

business, if known, and if not, at his ordinary residence, if known.

(*d.*) In any other case, if presented to the drawee or acceptor, wherever he can be found, or if presented at his last known place of business or residence.

(5.) Where a bill is presented at the proper place, and, after the exercise of reasonable diligence, no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6.) Where a bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

(7.) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and, with the exercise of reasonable diligence, he can be found.

(8.) Where authorized by agreement or usage, a presentment through the post office is sufficient.

**45**. (1.) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence; when the cause of delay ceases to be operative, presentment must be made with reasonable diligence.

(2.) Presentment for payment is dispensed with:

(*a.*) Where, after the exercise of reasonable diligence, presentment, as required by this chapter, cannot be effected. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(*b.*) Where the drawee is a fictitious person.

(*c.*) As regards the drawer, where the drawee or acceptor is not bound as between himself and the drawer to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(*d.*) As regards an endorser, where the bill was accepted, or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(*e.*) By waiver of presentment, express or implied

**46**. (1.) A bill is dishonoured by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained; or (*b*) when presentment is excused and the bill is overdue and unpaid.

(2.) Subject to the provisions of this chapter, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

**47.** Subject to the provisions of this chapter, when a bill has been dishonoured by non-acceptance, or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; provided that—

(1.) Where a bill is dishonoured by non-acceptance and notice of dishonour is not given, the rights of a holder in due course, subsequent to the omission, shall not to be prejudiced by the omission.

(2.) When a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted.

**48.** Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules:—

(1.) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser, who, at the time of giving it, is himself liable on the bill.

(2.) Notice of dishonour may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

(3.) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4.) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsees subsequent to the party to whom notice is given.

(5.) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6.) The return of a dishonoured bill to a drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(7.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A mis-description of the bill shall not vitiate

the notice, unless the party to whom the notice given is in fact misled thereby.

(8.) Where notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf.

(9.) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and, with the exercise of reasonable diligence, he can be found.

(10.) Where the drawer or indorser is insolvent, notice may be given either to the party himself or to the trustee or assignee.

(11.) Where there are two or more drawers or indorsers, who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12.) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time hereafter.

In the absence of special circumstances, notice is not deemed to have been given within a reasonable time, unless—

(*a.*) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(*b.*) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post, at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter.

(13.) Where a bill, when dishonoured, is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

(14.) Where a party to a bill receives due notice of dishonour, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15.) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any mis-carriage by the post office.

**49** (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving

notice and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the notice must be given with reasonable diligence.

(2.) Notice of dishonour is dispensed with—

(*a.*) When, after the exercise of reasonable diligence, notice as required by this chapter cannot be given to or does not reach the drawer or indorser sought to be charged.

(*b.*) By waiver, express or implied. Notice of dishonour may be waived before the time of giving notice has arrived or after the omission to give due notice.

(*c.*) As regards the drawer in the following cases, namely:—

(1.) When the drawer and drawee are the same person; (2.) where the drawee is a fictitious person, or a person not having capacity to contract; (3.) where the drawer is the person to whom the bill is presented for payment; (4.) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill; (5.) where the drawer has countermanded payment.

(*d.*) As regards the indorser in the following cases, namely:—

(1.) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill; (2.) where the indorser is the person to whom the bill is presented for payment; (3.) where the bill was accepted or made for his accommodation.

**50.** Where an inland bill has been dishonoured, it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be, but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2.) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested, the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4.) Subject to the provisions of this chapter, when a bill is noted or protested, it must be noted on the day of its dishonour; when a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5.) When the acceptor of a bill becomes insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6.) A bill must be protested at the place where it is dishonoured. Provided that—

(*a*.) When a bill is presented through the post office and returned by post dishonoured, it may be protested at the place to which it is returned, and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day.

(*b*.) When a bill drawn payable at the place of business or residence of some person other than the drawer, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to or on demand on the drawee is necessary.

(7.) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(*a*.) The person at whose request the bill is protested.

(*b*.) The date and place of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8.) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9.) Protest is dispensed with by any circumstances which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

**51**. (1.) When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.

(2.) When, by the terms of a qualified acceptance, presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3.) In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him,

(4.) When the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

LIABILITIES OF PARTIES.

**52**. A bill of itself does not operate as an assignment of funds in the hands of the drawee, available for the payment thereof, and the drawee of a bill who does not accept as required by this chapter, is not liable on the instrument.

**53**. The acceptor of a bill by accepting it—

(1.) Engages that he will pay it according to the tenor of his acceptance:

(2.) Is precluded from denying to a holder in due course;

(*a*.) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill.

(*b*.) In the case of a bill payable to a drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(*c*.) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

**54**. (1.) The drawer of a bill by drawing it—

(*a*.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided, that the requisite proceedings on dishonour be duly taken;

(*b*.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2.) The indorser of a bill by indorsing it—

(*a*.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b*.) Is precluded from denying to a holder, in due course, the genuineness and regularity in all respects of the drawee's signature, and all previous indorsements;

(*c.*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was, at the time of his indorsement, a valid and subsisting bill, and that he had then a good title thereto.

**55**. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

**56**. Where a bill is dishonoured, the measure of damages which shall be deemed to be liquidated damages shall be as follows :

(1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor, or from the drawer, or from a prior indorser—

(*a.*) The amount of the bill ;

(*b.*) Interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case ;

(*c.*) The expense of noting, or when protest is necessary and the protest has been extended, the expense of protest.

(2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him the amount of the re-exchange, with interest thereon until the time of payment.

(3.) Where by this chapter interest may be recovered as damages, such interest may, if justice require it, be withheld, wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

**57**. (1.) Where the holder of a bill payable to bearer negotiates it by delivery, without indorsing it, he is called a "transferor by delivery."

(2.) A transferor by delivery is not liable on the instrument.

(3.) A transferor by delivery, who negotiates a bill, thereby warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

### Discharge of Bill.

**58**. (1.) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof, if in good faith, and without notice that his title to the bill is defective.

(2.) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged, but

(*a.*) Where a bill payable to or to the order of a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(*b.*) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights, as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements and again negotiate the bill.

(3.) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

**59.** When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith, and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

**60.** When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

**61.** (1.) When the holder of a bill at or after its maturity, absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged. The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2.) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder, in due course, without notice of the renunciation.

**62.** (1.) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2.) In like manner any party liable on the bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3.) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but when

a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

**63**. When a bill or acceptance is materially altered, without the assent of all parties liable on the bill, the bill is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers. Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2.) In particular, the following alterations are material, namely: any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted, generally, the addition of a place of payment, without the acceptor's assent.

ACCEPTANCE AND PAYMENT FOR HONOUR.

**64**. (1.) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person not being a party already liable thereon may, with consent of the holder, intervene, and accept the bill, *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3.) An acceptance for honour, *supra* protest, in order to be valid, must—

(*a*.) Be written on the bill, and indicate that it is an acceptance for honour:

(*b*.) Be signed by the acceptor for honour.

(4.) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5.) When a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

**65**. (1.) The acceptor for honour of a bill, by accepting, engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee; provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2.) The acceptor for honour is liable to the holder, and to all parties to the bill, subsequent to the party for whose honour he has accepted.

**66.** (1.) Where a dishonoured bill has been accepted for honour, *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour or referee in case of need.

(2.) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity, and when the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3.) Delay in presentment or non-presentment is excused by any circumstances which would excuse delay in presentment for payment or non-presentment for payment.

(4.) When a bill of exchange is dishonoured by an acceptor for honour, it must be protested for non-payment by him.

**67.** (1.) Where a bill has been protested for non-payment, any person may intervene and pay it, *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3.) Payment for honour, *supra* protest, in order to operate as such, and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

(4.) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour and for whose honour he pays.

(5.) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for and succeeds to both the rights and duties of the holder, as regards the party for whose honour he pays and all parties liable to that party.

(6.) The payer for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest; if the

holder do not, on demand, deliver them up, he shall be liable to the payer for honour in damages. Where the holder of a bill refuses to receive payment, *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

LOST INSTRUMENTS.

**68.** Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again. If the drawer, on request as aforesaid, refuse to give such duplicate bill, he may be compelled to do so.

**69.** In any action or proceeding upon a bill, the Court or Judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question.

BILL IN A SET.

**70.** (1.) Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

(2.) When the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if the said parts were separate bills.

(3.) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between the holders, deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5.) When the acceptor of a bill, drawn in a set, pays it without requiring the part bearing his acceptance to be delivered up to him, and the part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, when any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

### Conflict of Laws.

**71**. Where a bill drawn in one country is negotiated, accepted or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows:—

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue; and the validity, as regards requisites in form of the supervening contracts, such as acceptance or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made: Provided that—

(*a*.) Where a bill is issued out of this colony it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue.

(*b*.) Where a bill issued out of this colony conforms as regards requisites in form to the laws of this colony, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in this colony.

(2.) Subject to the provisions of this chapter, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made: Provided that when an inland bill is endorsed out of this colony, the endorsement shall, as regards the payer, be interpreted according to the law of this colony.

(3.) The duties of the holder with respect to presentment for acceptance or payment, and the necessity for or sufficiency of a protest, or notice of dishonour or otherwise, are determined by the law of the place where the act is done, or the bill is dishonoured.

4.) Where a bill is drawn out of, but payable in this colony, and the sum payable is not expressed in the currency of this colony, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(5.) Where a bill is drawn in one country and payable in another, the due date thereof is determined according to the law of the place where it is payable.

## PART III.

### Cheques on a Banker.

**72**. A cheque is a bill of exchange drawn on a banker, payable on demand. Except as otherwise provided in this part, the provisions of this chapter applicable to a bill of exchange payable on demand apply to a cheque.

**73.** Subject to the provisions of this chapter—

(1.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the banker, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such a cheque been paid.

(2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3.) The holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such banker, to the extent of such damage, and entitled to recover the amount from him.

**74.** The duty and authority of a banker to pay a cheque drawn on him by his customer, are determined by—

(1.) Countermand of payment.

(2.) Notice of the customer's death.

## PART IV.

### Promissory Notes.

**75.** (1.) A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.

(2.) An instrument in the form of a note payable to maker's order, is not a note within the meaning of this section, unless and until it is indorsed by the maker.

(3.) A note is not invalid by reason only that it contains also a pledge of collateral security, with authority to sell or dispose thereof.

(4.) A note which is or on the face of it purports to be both made and payable within this colony is an inland note; any other note is a foreign note.

**76.** A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

**77.** (1.) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.

(2.) Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note.

**78.** (1.) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented, the indorser is discharged.

(2.) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3.) Where a note, payable on demand, is negotiated, it is not deemed to be overdue for the purpose of affecting the holder with defects of title, of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

**79.** (1.) Where a promissory note is, in the body of it, made payable at a particular place, it must be presented for payment at that place, in order to render the maker liable; in any other case presentment for payment is not necessary in order to render the maker liable.

(2.) Presentment for payment is necessary in order to render the indorser of a note liable.

(3.) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary, in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

**80.** The maker of a promissory note by making it—

(1.) Engages that he will pay it according to its tenor.

(2.) Is precluded from denying to a holder in due course, the existence of the payee, and his then capacity to indorse.

**81.** (1.) Subject to the provisions in this part, and except as by this section provided, the provisions of this chapter relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2.) In applying those provisions, the maker of a note shall be deemed to correspond with the acceptor of a bill, and first endorser of a note shall be deemed to correspond with the drawer of an accepted bill, payable to drawer's order.

(3.) The following provisions, as to bills, do not apply to notes, namely, provisions relating to—

(*a.*) Presentment for acceptance,

(*b.*) Acceptance

(*c.*) Acceptance, *supra* protest

(*d.*) Bills in a set.

(4.) Where a foreign note is dishonoured, protest thereof is unnecessary.

## PART V.

### Supplementary.

**82.** A thing is deemed to be done in good faith within the meaning of this chapter where it is in fact done honestly, whether it is done negligently or not.

**83.** (1.) Where by this chapter any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2.) In the case of a corporation where by this chapter any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

**84.** Where by this chapter the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. Non-business days, for the purposes of this chapter, mean Sunday, Good Friday, Christmas Day, New Year's Day, the Queen's Birthday, or the day appointed to be kept in its place; a day appointed by proclamation as a public fast, thanksgiving day, or public holiday, the days after Christmas and New Year's Day when these days fall on Sunday. Any other day is a business day.

**85.** For the purposes of this chapter, where a bill or note is required to be protested within a specified time, or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding and the formal protest may be extended at any time thereafter, as of the date of the noting.

**86.** Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill The form of protest given in the schedule to this chapter may be used with necessary modifications, and if used, shall be sufficient.

**87**. The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this chapter, shall continue to apply to bills of exchange, promissory notes and cheques.

## SCHEDULE.

FORM OF PROTEST WHICH MAY BE USED WHEN THE SERVICES OF A NOTARY CANNOT BE OBTAINED.

Know all men, that I, A. B., [householder], of , in , at the request of C. D., there being no Notary Public available, did, on the day of , 18 , at , demand payment [or acceptance] of the bill of exchange, hereunder written, from E. F., to which demand he made answer, [state answer, if any], wherefore, I now, in the presence of G. H. and J. K., do protest the said bill of exchange.

(Signed,) A. B.

G. H.,
J. K., } Witnesses.

N. B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

# CHAPTER 94.

## Of Bills of Lading.

SECTION
1.—Endorsee of bills to have rights of suit.
2.—Not to prejudice right of stoppage *in transitu*.
3.—Bill of lading conclusive evidence against master. Proviso.

**1**. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon, or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

**2**. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board of any vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods, or some part thereof, may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board: Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part and wholly by the fraud of the shipper or the holder, or some person under whom the holder claims.

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# CHAPTER 95.

## Of Banks and Banking.

SECTION
1.—Chartered banks shall have a lien on stock for debts and current liabilities of shareholders.
2.—Provisions for transfer of stock.
3.—Union and Commercial Bank Acts amended.
4.—Banks may receive deposits from minors, and repay such minors; adverse claim; payment by consent.
5. Bank not required to see trusts executed; receipt of one, one of two, or majority of depositors sufficient discharge.

1. All chartered or incorporated banks in this colony shall have a preferential lien on the stock of the said banks for any debt due to them by, and for current liability of any shareholder, whether joint or several.

2. The shares in the capital stock of any chartered or incorporated bank in this colony shall be assignable and transferable, subject and according to such regulations as may be established in that behalf by the bye-laws of said bank; but no assignment or transfer shall be valid or effectual unless such assignment or transfer shall first be approved of by the board of directors and entered and registered in a book to be kept for that purpose, nor (unless with the sanction of the directors) until the party making the same shall first discharge all his then existing liabilities to the bank, whether direct or collateral, and whether the same shall be payable then or at any future time.

3. The several Acts for the incorporation of the Union Bank of Newfoundland and of the Commercial Bank of Newfoundland, and all Acts in amendment thereof, shall be held to be subject to and amended by the foregoing sections, anything in the said Acts contained notwithstanding.

4. It shall be lawful for any such bank to receive deposits from any person or persons whomsoever, whatever be his, her or their age, status,

or condition in life, and whether such person or persons be qualified by law to enter into ordinary contracts or not; and from time to time to repay any or all of the principal thereof, and to pay the whole or any part of the interest thereon, to such person or persons respectively without the authority, aid, or assistance of any person or persons, official or officials, being required, unless before such repayment the money so deposited in the said bank be lawfully claimed as the property of some other party, in which case it may be paid to the depositor, with the consent of the claimant, or to the claimant with the consent of the depositor, any law, usage or custom to the contrary notwithstanding.

**5**. No such bank shall be bound to see to the execution of any trust, whether expressed, implied, or constructive, to which any deposit may be subject, and, except only in the case of lawful claim by some other party before repayment, the receipt of any person in whose name such deposit stands, or if it stand in the name of two persons, the receipt of one, and if in the name of more than two persons, the receipt of a majority of such persons shall be a sufficient discharge to all concerned for the payment of any money payable in respect of such deposit, notwithstanding any trust to which such deposit may then be subject, and whether or not the bank sought to be charged with such trust (and with whom the deposit may have been made) had notice thereof; and no such bank shall be bound to see to the application of the money paid upon such receipt, any law or usage to the contrary notwithstanding.

**6**. The following days shall be kept as close holidays (hereinafter called bank holidays) in all banks authorized by law to carry on business in this colony, that is to say:—Sunday, New Year's Day, Good Friday, Christmas Day, the day after New Year's Day and the day after Christmas Day, when New Year's Day and Christmas Day fall on Sunday, and any day appointed by proclamation of the Governor for a public holiday or for a fast or thanksgiving day in this colony.

# CHAPTER 96.

## Of the Incorporation, &c., of Trading and Manufacturing Companies, and of other Societies.


SECTION
1.—Formation of companies.
2.—When to be bodies corporate.
3.—Election of directors.
4.—Election may be on any day.
5.—Officers.
6.—Powers of directors; liability of shareholders.
7.—When interest is chargeable.
8.—When calls are not paid, how recoverable.
9.—When action taken by the company; proceedings defined.
10.—On trial or hearing, what proof necessary.
11.—Mode of proving defendant a shareholder.
12.—Powers of directors when shareholders fail to pay calls.
13.—Before declaring any share forfeited certain notices must be given.
14.—Powers given to directors to sell forfeited shares.
15.—What sufficient to declare share forfeited.
16.—Company not to sell more shares of any defaulter than sufficient to pay arrears.
17.—When arrears of calls, &c., paid, shares to revert to the party to whom the same belonged.
18.—Power to make bye-laws.
19.—Stock transferable.
20.—Copy of certificate to be evidence.
21.—President, &c., on capital stock being fixed and paid in, to certify the same.
22.—Annual report on oath.
23.—Penalty for falsifying reports, &c.
24.—Liability of members of company.
25.—Limitation of their liabilities.
SECTION
26.—Liability of directors declaring dividend while company insolvent.
27.—Shares to be personal property and liable to attachment and execution.
28.—Note or obligation not to be regarded as payment of money; company not to loan money to shareholders.
29.—Powers of directors to purchase ships, lands, &c.
30.—Power to increase or diminish capital stock; power to extend business of company.
31.—Notice thereof to be given.
32.—Proceedings at meeting of stockholders.
33.—Company to have its name on its office.
34.—Register of stockholders; evidence of facts therein.
35.—Statement of the affairs of the company.
36.—On loss of three-fourths of the subscribed capital stock, the business of the company to be brought to a close.
37.—Sale of property of company in contemplation of insolvency void.
38.—Transfer of property of shareholder in contemplation of insolvency to be void.
39.—Any society requiring to be incorporated may file certificate in the Colonial Secretary's Office.
40.—Whereupon such society shall be deemed a body corporate.
41.—Lands, &c., belonging to such society shall be vested in such corporate society.
42.—The Governor to appoint general auditors of companies.


**1.** Any three or more persons who may desire to form a company for the purpose of carrying on manufacturing, mining, mechanical, chemical, whaling, sealfishing, lumbering, or any mercantile business whatsoever, except banking and insurance, may make, sign and acknowledge, before a Notary Public, and file in the office of the Colonial Secretary a certificate in writing, in which shall be stated the corporate name of the said company and the objects for which the company shall be formed, the amount of the capital stock of the said company, the term of its existence, not to exceed fifty years, the number of shares of which the said stock shall consist, the number of directors and their names, who shall manage the concerns of said company for the first year.

**2.** When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and all stockholders in the said company and their successors shall be a body politic and corpo-

rate, in fact and in name, by the name stated in such certificate, and by that name have succession, and shall be capable of suing and being sued, and they and their successors may have a common seal, and may make and alter the same at pleasure, and they shall, by their corporate name, be capable in law of purchasing, holding and conveying, any real or personal estate whatsoever, which may be necessary, to enable the said company to carry on their operations mentioned in such certificate.

**3.** The stock, property and concerns of such company shall be managed by not less than three or more than nine directors, who shall respectively be stockholders in such company, and may be British subjects or aliens, and some of whom shall be residents in this colony, who shall, except the first year, be annually elected by the stockholders at such place in this colony, or elsewhere, and at such time, as shall be directed by the bye-laws of the company; and public notice of the time and place of holding such election shall be published, not less than twenty days previous thereto, in the *Royal Gazette* of this colony, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy appointed in writing; all elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company; and the persons receiving the greatest number of votes shall be directors; and when any vacancy shall happen among the directors by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as may be provided for by the bye-laws of the said company.

**4.** In case it shall happen at any time that an election of directors shall not be made on the day designated by the bye-laws of the said company when it ought to have been made, the company for that reason shall not be dissolved, but an election for directors may be held on any other day in such manner as shall be provided for by the said bye-laws; and all acts of directors shall be valid and binding as against such company until their successors shall be elected.

**5.** There shall be a president of the company who shall be elected by the directors from amongst themselves, and also such subordinate officers as the company, by its bye-laws, may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office, as the company by its bye-laws may require.

**6.** The directors may call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or instalments as the directors shall deem proper, notice of such call, and of the time and place of payment, having first been published in the *Royal Gazette* for a period of twenty-one days before such call is payable; and shareholders shall be liable to pay the amount of the calls so made, in respect of the shares held by them, to the persons, and at the persons, and at the times and places, from time to time appointed by the company.

7. If before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the amount at the rate of five pounds per centum per annum, from the day appointed for the payment thereof to the time of the actual payment.

8. If at any time appointed by the company for the payment of any call, any shareholder fail to pay the amount of such call, the company may sue such shareholder for the amount thereof, in any court of law having competent jurisdiction, and recover the same with lawful interest from the day on which such call was payable, or the company may declare the share of such shareholder forfeited as hereinafter provided.

9. In any action to be brought by the company against any shareholder, to recover any money due for any call, it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to aver that the defendant is the holder of one share or more in the company, stating the number of shares, and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more, upon one share or more, [stating the number and amount of each of such calls] whereby an action has accrued to the company by virtue of this chapter.

10. On the trial or hearing of such action, it shall be sufficient to prove that the defendant, at the time of making such call, was a holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given, as is directed by this chapter; and it shall not be necessary to prove the appointment of the directors who made such call, or any other matter whatsoever, and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear that due notice of such call was not given as prescribed.

11. The production of the register of shareholders shall be *prima facie* evidence of such defendant being a shareholder, and the number and amount of his shares.

12. If any shareholder fail to pay any call payable by him, together with the interest, if any, that shall have accrued thereon, the directors may, at any time after the expiration of two months from the day appointed for payment of such call, declare the share in respect of which such call was payable forfeited, and that whether the company have sued for the amount of such call or not.

13. Before declaring any share forfeited, the directors shall cause notice of such intention to be left at, or transmitted by the post to, the usual or last place of abode of such shareholder, and also give public notice of such intention in the *Royal Gazette* and two other newspapers, and those notices shall be given at least twenty-one days before the directors shall declare such share forfeited,

**14.** After such declaration of forfeiture the directors may sell the forfeited share by public auction, and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit, and any shareholder may purchase any forfeited share so sold.

**15** A declaration in writing by the president, treasurer, or secretary of the company, made before a Justice of the Peace, that the call in respect of a share was made, and notice thereof given, and default in payment of the call was made, and that the forfeiture of the share was declared in the manner hereinafter required, shall be sufficient evidence of the facts therein stated, and such declaration and the receipt of the treasurer of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to such purchaser, and thereupon he shall be deemed to be the holder of such share, discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

**16.** The company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of such calls, together with interest and the expenses attending such sale and declaration of forfeiture; and if the money produced by the sale of any such forfeited shares be more than sufficient to pay all arrears and interest thereon, due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall be paid to the defaulter.

**17.** If payment of such arrears of calls and interest and expenses be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture in such manner as if such calls had been duly paid

**18.** The directors may make such bye-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this colony, and prescribing the duties of officers, artificers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

**19.** The stock of such company shall be deemed personal property, and shall be transferable in such manner as shall be prescribed by the bye-laws of the company, but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon; and no such company shall use any of its funds in the purchase of stock in any other corporation.

**20.** The copy of any certificate of incorporation filed in pursuance of this chapter, certified by the Colonial Secretary to be a true copy, shall be received in all courts and places as presumptive legal evidence of the facts therein stated.

**21.** The president and one or more of the directors, within thirty days after the payment of the last instalment of the capital stock fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and one or more of the directors, and they shall, within the said thirty days, record the same in the office of the Colonial Secretary.

**22.** Every such company shall annually, within forty days from the first day of January, make a report, which shall be published in the *Royal Gazette* of this colony, which shall state the amount of capital, and of the proportion actually paid in, and the amount of its existing debts, which report shall be signed by the president and a majority of the directors, and shall be verified by the oath of the president or secretary of said company, and filed in the office of the Colonial Secretary to be laid before the legislature.

**23.** If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this chapter, shall be false in any material representation all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they are stockholders and officers thereof.

**24.** The members of a company incorporated under this chapter, shall not be liable, under any attachment, judgment, decree, or order, which shall be obtained against such company, or for any debt or engagement of such company, further or otherwise than is herein provided.

**25.** If any execution, sequestration, or other process in the nature of execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy or enforce such execution, sequestration, or other process, then such execution, sequestration, or other process, may be issued against any of the shareholders, to the extent of the portion of their shares in the capital of the company not then paid up; but no shareholder shall be liable to pay, in satisfaction of any one or more such executions, sequestrations or other process, a greater sum than shall be equal to the portion of his share not paid up; and no execution shall be issued against any shareholder except upon an order of the Court, or a Judge of the Court, in which the action, suit, or other proceedings shall have been brought or instituted, and such Court or Judge may order execution to issue accordingly with the reasonable costs of such application or execution, to be taxed by a Master of the said Court; and for the purpose of ascertaining

the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, any person entitled to any such execution, may, at all reasonable times, inspect the register of shareholders without fee.

**26.** If the directors of any such company shall declare and pay any dividend, when the company is known by them to be insolvent, or any dividend the payment of which would, to their knowledge, render it insolvent, they shall be jointly and severally liable for the debts of the company then existing, and for all that shall be thereafter contracted, so long as they shall respectively continue in office; but the amount for which they shall be liable shall not exceed the amount of such dividend, and if any of the directors shall be absent at the time of making the dividend, or shall object thereto and shall file their objection in writing with the secretary of the company, they shall be exempted from the said liability.

**27.** The shares in the capital stock of the said company shall be liable to attachment and execution as other personal property, and the process or warrant in such case shall be served on the president or director of such company resident in Newfoundland, and such service shall bind the shares of any stockholder to the extent of such attachment or execution issued against him from the time that notice thereof shall be actually given at the principal office of the said company in this colony, where the transfer of shares shall be registered; and for the purpose of ascertaining the number of shares held by any shareholder against whom any attachment or execution may have been issued, the president, secretary, or director, or other officer of the said company, may be examined in like manner as any third person having in possession any goods, moneys, debts or effects of any defendant; and upon the sale by the sheriff or other proper officer of any such shares, under execution, or otherwise, the officers or agents of said company having charge of the transfer books, shall, on production of a bill of sale from the sheriff or other proper officer, transfer to the purchaser thereof the number of shares sold under such execution or other process and belonging to the defendant at the time of such notice being given at the transfer office as aforesaid; and such transfer shall be valid and effectual to all intents and purposes, and such sale shall be subject to any debt that may be due from such defendant to the said company, and no sale shall be made or judgment rendered until at least three months after such notice given at the transfer office as aforesaid.

**28.** No note or obligation given by any shareholder to the company whereof he is a shareholder, whether secured by any pledge or otherwise, shall be considered as payment of any money due from him on any share held by him; and no loan of money shall be made by any such company to any such shareholder therein; and if any such loan shall be made to a shareholder, the directors who shall make it, or who shall assent thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the company contracted before the payment of the money lent.

**29.** The directors of such company may purchase vessels, lands, mines, manufactories, and other property necessary for their business, and issue stock to the amount of the value thereof, in payment therefor, and the stock so issued shall be declared and taken to be full stock, and not liable to any further calls.

**30.** Any corporation which may be formed under this chapter, may increase or diminish its capital stock by complying with the provisions of this chapter, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other manufacturing, mining, mechanical, chemical, whaling, seal-fishing, lumbering, or any other mercantile business except banking and insurance, subject to the provisions and liabilities of this chapter. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced such amount of debts and liabilities shall be satisfied and reduced, so as not to exceed such diminished amount of capital.

**31** Whenever any company shall desire to call a meeting of the stockholders for the purpose of availing itself of the privilege and provisions of this chapter, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, the directors shall publish a notice, signed by at least a majority of them, in the *Royal Gazette* of this colony at least six successive weeks, and deposit a written or printed copy thereof in the post office, addressed to each stockholder at his usual place of residence, at least six weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to diminish or increase the capital, and the business to which the company would be extended or changed; and a vote of at least two-thirds of all the shares of the stock shall be necessary to an increase or diminution of the amount of its capital stock or the extension or change of its business as aforesaid; or to enable a company to avail itself of the provisions of this chapter.

**32.** If, at any time and place specified in the notice provided for in the preceding section of this chapter, stockholders shall appear in person, or by proxy authorized in writing, in number representing two-thirds of all shares of all stock of the corporation, they shall organize by choosing one of the directors chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy authorized in writing; and if on canvassing the votes it shall appear that a sufficient number of votes has been given in favour of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or for availing itself of the privileges or provisions of this chapter, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts

and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the chairman, and be countersigned by the secretary; and such certificate shall be acknowledged by the chairman and filed as required by the first section of this chapter, and when so filed the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed as aforesaid, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this chapter.

**33**. Every company formed under this chapter shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible letters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements and other official publications of such company, in all bills of exchange, promissory notes, cheques or orders for money, bills of parcels, invoices, receipts, letters and other writings used in the transaction of the business of the company.

**34**. The directors of every such corporation or company shall cause a register to be kept by the treasurer or secretary thereof, containing the names of all persons, alphabetically arranged, who are or shall within six years have been stockholders of such company, and showing their places of residence, the number of shares of stock held by them respectively, and the time when they became respectively owners of such shares, and the amount actually paid in, which register shall, during the business hours of the day, on every lawful day, be open for the inspection of stockholders and creditors of the company, and their personal representatives, at the office or principal place of business of such company in this colony; and any such stockholder, creditor or representative shall have a right to make extracts from such register; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transfered liable for the debts of the company according to the provisions of this chapter, until it shall have been entered therein as required by this section, by an entry showing to and from whom transferred; such register shall be presumptive evidence of the facts therein stated, in favor of the plaintiff in any suit or proceeding against such company, or against any one or more stockholders; every officer or agent of any such company who shall neglect to make any proper entry in such register, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as provided by this section, shall be guilty of a misdemeanor, and the company shall forward and pay to the party injured a penalty of eighty dollars for any such neglect or refusal and all the damages resulting therefrom, and every company that shall neglect to keep such register open for inspection as aforesaid, shall forfeit to her Majesty the sum of eighty dollars for every day it shall so neglect, to be sued for and be recovered in the name of her Majesty by the Attorney

General of this colony, and when so recovered the amount shall be paid into the office of the Receiver General of this colony.

**35.** Whensoever any persons owning fifteen per cent. of the capital stock of any company formed under the provisions of this chapter, shall present a written request to the treasurer thereof demanding a statement of the affairs of such company, such treasurer shall make a statement of the affairs of said company under oath, embracing a particular account of the assets and liabilities in minute detail, and deliver such statement to the person who presented the said written request to the treasurer within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office, for six months thereafter, a copy of such statement, which shall at all times during business hours be exhibited to any stockholder of such company demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement, in the manner aforesaid, oftener than once in any six months; if such treasurer shall neglect or refuse to comply with any of the provisions of this section, he shall forfeit and pay to the person presenting such written request the sum of fifty dollars, and a further sum of fifty dollars for every twenty-four hours thereafter, until such statement shall be furnished, to be sued for and recovered in any Court having cognizance thereof.

**36.** In the case of any company which has obtained a certificate of limited liability, whenever, on taking the yearly accounts of such company, or by any report of the auditors thereof, it appears that three-fourths of the subscribed capital stock of the company have been lost or become unavailable in the course of trade, from the insolvency of shareholders or from any other cause, the trading and business of such company shall forthwith cease, or shall be carried on for the sole purpose of winding up its affairs; and the directors of such company shall forthwith take proper steps for the dissolution of such company, and for the winding up of its affairs, by petition to the Supreme Court, which shall make such order, judgment or decree thereon as shall be just, or by such other lawful course as the directors may think most fit.

**37.** Every sale, assignment or transfer of any of the property or effects of such company made thereby, when in contemplation of a declaration of insolvency, or after or in contemplation of a declaration of the insolvency of any shareholder, with the intent to give a preference to any creditor of such company, or insolvent shareholder, over other creditors of such company, and every judgment confessed, lien created, or security given by such company, under the like circumstances, and with the like intent, shall be void, as against the creditors of such company.

**38.** Every such sale, assignment or transfer of any of the property or effects of a shareholder, made by such shareholder when in contemplation of a declaration of the insolvency of the company, with the intent of giving to any creditor of his own or of the company a preference over creditors of

the company; and every judgment confessed, lien created, or security given, by any such shareholder, under the like circumstances, and with the like intent, shall be void as against the creditors of the company.

**39**. At any time hereafter any society or association, formed for religious, charitable, educational, or other lawful purposes, being desirous to promote the objects for which it is or may be established, may, through the office bearers, trustees or members, make, sign and acknowledge, before a notary public and file in the office of the Colonial Secretary, a certificate in writing, in which shall be stated the proposed corporate name of the said society or association, and the objects for which the same is or shall be formed, the names of its office bearers, trustees or members, and the rules, regulations, orders and bye-laws thereof.

**40**. When such certificate shall have been filed, the persons who shall have signed and acknowledged the same, and all other members of such society or association, and their successors, shall be a body politic and corporate in name and in fact, by the name stated in such certificate, and by that name have succession, shall be capable of suing and being sued, and they and their successors may have a common seal, and may make and alter the same at pleasure; and they may elect officers and make bye-laws, rules and regulations for the management of the affairs of such society or association; and they shall, by their corporate name, be capable in law of purchasing, holding and conveying any landed or personal estate whatever, and of transacting all business appertaining to such society or association, according to such bye-laws, rules and regulations.

**41**. Immediately upon filing the said certificate, all the lands, tenements, funds, monies, securities, and other property belonging to such society or association, shall, by virtue of this chapter, and without further or other conveyance, be transferred to and vested in such corporate society or association, for the uses thereof.

**42**. The Governor may direct an audit of the accounts of any such companies in such manner and at such times as may be deemed necessary or expedient.

# CHAPTER 97.

## Of the Law of Partnership.


SECTION
1.—Definition of partnership.
2.—Rules for determining existence of partnership.
3.—Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency.
4.—Meaning of firm.
5.—Power of partner to bind the firm.
6.—Partners bound by acts on behalf of firm.
7.—Partner using credit of firm for private purposes.
8.—Effect of notice that firm will not be bound by acts of partner.
9.—Liability of partners.
10.—Liability of the firm for wrongs.
11.—Misapplication of money or property received for or in custody of the firm.
12.—Liability for wrongs, joint and several.
13.—Improper employment of trust property for partnership purposes.
14.—Persons liable by "holding out."
15.—Admissions and representation of partners.
16.—Notice to acting partner to be notice to firm.
17.—Liabilities of incoming and outgoing partners.
18.—Revocation of continuing guaranty by change in firm.
19.—Variation by consent of terms of partnership.
20.—Partnership property.
21.—Property bought with partnership money.
22.—Procedure against partnership property for a partner's separate judgment debt.
23.—Rules as to interests and duties of partners subject to special agreement.
SECTION
24.—Expulsion of partner.
25.—Retirement from partnership at will.
26.—Where partnership for term is continued over, continuance on old terms presumed.
27.—Duty of partners to render accounts, &c.
28.—Accountability of partners for private profits.
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30.—Rights of assignee of share in partnership.
31.—Dissolution by expiration or notice.
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34.—Dissolution by the Court.
35.—Rights of persons dealing with firm against apparent members of firm.
36.—Right of partners to notify dissolution.
37.—Continuing authority of partners for purposes of winding up.
38.—Rights of partners as to application of partnership property.
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40.—Rights where partnership dissolved for fraud or misrepresentation.
41.—Right of outgoing partner in certain cases to share profits made after dissolution.
42.—Retiring or deceased partner's share to be a debt.
43.—Rule for distribution of assets on final settlement of accounts.
44.—Definitions of "court" and "business."
45.—Saving for rules of equity and common law.
46.—Short title.


### NATURE OF PARTNERSHIP.

**1.** (1.) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

2. But the relation between members of any company or association which is

(*a.*) Registered as a company under the "Companies' Incorporation Act, 1873," or any other Act of the Legislature for the time being in force and relating to the registration of joint stock companies; or

(*b.*) Formed or incorporated by or in pursuance of any other Act of the Legislature or letters patent, or royal charter, is not a partnership within the meaning of this chapter.

**2.** In determining whether a partnership does or does not exist, regard shall be had to the following rules;

(1.) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership, as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;

(2.) The sharing of gross returns does not of itself create a partnership whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;

(3.) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular.

(*a.*) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such:

(*b.*) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such:

(*c.*) A person being the widow or child of a deceased partner and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner is not by reason only of such receipt a partner in the business or liable as such:

(*d.*) The advance of money by way of loan to a person engaged, or about to engage, in any business on a contract with that person, that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided the contract is in writing and signed by or on behalf of all the parties thereto:

(*e.*) A person receiving by way of annuity or otherwise, a portion of the profits of a business in consideration of the sale by him of the good-will of the business is not by reason only of such receipt a partner in the business or liable as such.

**3.** In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a good-will in consideration of a share of the profits of the business, being declared insolvent, entering into an arrangement to pay his creditors less than one hundred cents in the dollar, or dying in insolvent circumstances, the lender of the loan shall not be en-

titled to recover anything in respect of his loan, and the seller of the good-will shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

**4.** Persons who have entered into partnership with one another are for the purpose of this chapter called collectively a firm, and the name under which their business is carried on is called the firm-name.

Relations of Partners with Persons dealing with them.

**5.** Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

**6.** An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorized, whether a partner or not, is binding on the firm and all the partners. Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

**7.** Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless he is in fact specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner.

**8.** If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect of persons having notice of the agreement.

**9.** Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied but subject to the prior payment of his separate debts.

**10.** Where, by any wrongful act or omission of any partner, acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

**11**. In the following cases; namely,—

(*a*.) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and

(*b*.) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm;

the firm is liable to make good the loss.

**12**. Every partner is liable jointly with his co-partners and also severally for every thing for which the firm, while he is a partner therein, becomes liable under either of the two last preceding sections.

**13**. If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein: Provided as follows:—

(1.) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and

(2.) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

**14**. (1.) Everyone who by words spoken or written, or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2.) Provided that where, after a partner's death, the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executor's or administrator's estate or effects liable for any partnership debts contracted after his death.

**15**. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

**16**. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

**17.** (1.) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2.) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3.) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

**18.** A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect to the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which the guaranty or obligation was given.

### Relations of Partners to one another.

**19.** The mutual rights and duties of partners, whether ascertained by agreement or defined by this chapter, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing.

**20.** (1.) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise on account of the firm, or for the purposes and in the course of the partnership business, are called in this chapter partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2.) Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof and the general rules of law thereto applicable, but in trust so far as necessary for the persons beneficially interested in the land under this section.

(3.) Where co-owners of an estate or interest in any land not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belong to them, in the absence of agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of purchase.

**21.** Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm

**22.** (1.) A writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2.) The Supreme Court or a Judge thereof may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profit with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct all accounts and enquires and give all other orders and directions which might have been directed or given if the charge had been made in favor of the judgment creditor by the partner, or which the circumstances of the case may require.

(3.) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

**23.** The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:

(1.) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.

(2.) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—

(*a.*) In the ordinary and proper conduct of the business of the firm; or

(*b.*) In or about anything necessarily done for the preservation of the business or property of the firm.

(3.) A partner making for the purpose of the partnership any actual payment or advance beyond the amount of capital which he agreed to subscribe, is entitled to interest at the rate of six per cent. per annum from the date of the payment or advance.

(4.) A partner is not entitled before the ascertainment of profits, to interest on the capital subscribed by him.

(5.) Every partner may take part in the management of the partnership business.

(6.) No partner shall be entitled to remuneration for acting in the partnership business.

(7.) No person may be introduced as a partner without the consent of all existing partners.

(8.) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.

(9.) The partnership books are to be kept at the place of business of the partnership (or at the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

**24.** No majority of the partners can expel any partner, unless a power to do so has been conferred by express agreement between the partners.

**25.** (1.) Where no fixed time has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time, on giving notice of his intention so to do to all the other partners.

(2.) Where the partnership has originally been constituted by deed, a notice in writing signed by the partner giving it, shall be sufficient for this purpose.

**26.** (1). Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2.) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

**27.** Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

**28.** (1.) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connexion.

(2.) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up,

either by any surviving partner or by the representatives of the deceased partner.

**29.** If a partner without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

**30.** (1.) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership, business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2.) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES.

**31.** Subject to any agreement between the partners, a partnership is dissolved,—

(*a.*) If entered into for a fixed term, by the expiration of that term;

(*b.*) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking;

(*c*) If entered into for an undefined time, by any partner giving notice to the other, or others, of his intention to dissolve the partnership.

In the last mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned as from the date of the communication of the notice.

**32.** (1.) Subject to any agreement between the partners every partnership is dissolved as regards all the partners, by the death or insolvency of any partner.

(2.) A partnership may, at the option of the other partners be dissolved, if any partner suffers his share of the partnership property to be charged under this chapter for his separate debt.

**33.** A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on, or for the members of the firm to carry it on in partnership.

**34.** On application by a partner, the Court may decree a dissolution of the partnership in any of the following cases:—

(*a.*) When a partner is found lunatic by inquisition or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene, as by any other partner;

(*b.*) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;

(*c.*) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;

(*d.*) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;

(*e.*) When the business of the partnership can only be carried on at a loss;

(*f.*) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

**35.** (1.) Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm, until he has notice of the change.

(2.) An advertisement in the *Royal Gazette* and one other newspaper published in this colony, shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.

(3.) The estate of a partner who dies, or who becomes insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, insolvency, or retirement, respectively.

**36.** On the dissolution of a partnership, or retirement of a partner, any partner may publicly notify the same, and may require the other part-

ner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

**37.** After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners continue, notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise. Provided that the firm is in no case bound by the acts of a partner who has become insolvent; but this proviso does not affect the liability of any person who has after the insolvency represented himself, or knowingly suffered himself to be represented as a partner of the insolvent.

**38.** On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnerships applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners, respectively, after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the Court to wind up the business and affairs of the firm.

**39.** Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued; unless

*(a.)* The dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium, or

*(b.)* The partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

**40.** Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled

*(a.)* To a lien on or right of retention of the surplus of the partnership liabilities for any sum of money paid by him for the purchase of a share in the partnership, and for any capital contributed by him, and is

*(b.)* To stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, and

*(c.)* To be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

**41** (1.) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital and assets, without any final settlement of accounts as between the firm and the outgoing partner or his estate, then in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled, at the option of himself or his representatives, to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or interest at the rate of six per cent. per annum on the amount of his share of the partnership assets

(2.) Provided that where, by the partnership contract, an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

**42**. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner, or the representatives of a deceased partner, in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death.

**43**. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

(*a*.) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits.

(*b*.) The assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital shall be applied in the following manner and order:

(1.) In paying debts and liabilities of the firm to persons who are not partners therein.

(2.) In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital.

(3.) In paying to each partner rateably what is due from the firm to him in respect of capital.

(4.) The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

SUPPLEMENTAL.

**44**. In this chapter, unless the contrary intention appears, the expression "Court" includes every Court and Judge having jurisdiction in

the case; the expression "business" includes every trade, occupation or profession.

**45**. The rules of equity and common law applicable to partnership shall continue in force, except so far as they are inconsistent with the express provisions of this chapter.

**46**. This chapter may be cited as "The Partnership Act, 1892."

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# CHAPTER 98.

## Of Limited Partnerships.


SECTION
1.—Purposes of limited partnerships.
2.—Partnership to consist of general and special partners; their liabilities.
3.—General partners to transact business.
4.—Certificate to be signed by all the partners.
5.—Certificate, before whom and how acknowledged.
6.—In what places to be filed and recorded.
7.—Affidavit also to be filed.
8.—Partnership, when deemed formed; effects of false certificate.
9.—Terms of partnership; how published; effect of omission.
10.—Affidavit of publication; where to be filed; effect as evidence.
11.—Renewals, &c., of partnership; how to be made.
12.—Alterations deemed dissolution.
SECTION
13.—In what form and name business to be carried on.
14.—Suits to be in names of general partners.
15.—Special partner not to withdraw his capital.
16.—When to refund interest paid by him.
17.—Rights of special partners and restriction on them.
18.—Liability of general partners to account.
19.—Liability and punishment of parties guilty of fraud.
20.—Assignment of certain creditors void.
21.—Certain assignments void.
22.—Certain acts of special partner to render him liable.
23.—Special partners not to claim as creditors in case of insolvency of firm.
24.—Dissolution by acts of partners.
Schedule.


**1**. Limited partnerships for the transaction of mercantile, mechanical or manufacturing business within this colony may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this chapter shall not be construed to authorize any such partnership for the purpose of transacting the business of banking or making insurance.

**2**. Such partnerships may consist of one or more persons who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute in actual cash payments, or in property at its actual cash value, a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital.

**3**. The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same.

**4.** The persons desirous of forming such partnership shall make and severally sign a certificate, similar in effect to form No. 1 in the schedule hereunto annexed, and which certificate shall contain:—

(1.) The name or firm under which such partnership is to be conducted.

(2.) The general nature of the business intended to be transacted.

(3.) The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.

(4.) The amount of capital which each special partner shall have contributed to the common stock.

(5.) The period at which the partnership is to commence, and the period at which it will terminate.

**5.** The certificate shall be acknowledged by the several persons signing the same before a notary public, who shall certify such acknowledgment, whether made abroad or in this colony, under his seal of office, to the effect of form No. 2 in the schedule to this chapter annexed.

**6.** The certificate so acknowledged and certified shall be filed in the office of the Colonial Secretary, and shall be recorded in the said office at large, in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situate in different districts a transcript of the certificate and of the acknowledgment thereof, duly certified by the Colonial Secretary under his official seal, shall be filed and recorded in like manner in the office of the registrar of deeds for such district.

**7.** At the time of filing the original certificate, with the evidence of the acknowledgment thereof as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid; and which affidavit shall be similar in effect to form No. 3 in the annexed schedule.

**8.** No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

**9.** The partnership shall publish the terms of the partnership, when registered, for at least six weeks immediately after such registry in the *Royal Gazette* and in one or two other newspapers to be designated by the

Colonial Secretary, and to be published in this colony; and if such publication be not made, the partnership shall be general; and such advertisement shall be similar in effect to form No. 1 in the said annexed schedule.

**10.** Affidavits of the publication of such notice by the printers of the newspapers in which the same shall be published shall be filed in the office of the Colonial Secretary, and shall be evidence of the facts therein contained, and which affidavits shall be similar in effect to form No 5 in the said annexed schedule.

**11.** Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

**12.** Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, unless such alteration shall have been made according to the provisions of the twenty-fourth section of this chapter; and any such partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the last preceding section.

**13.** The business of the partnership shall be conducted under a firm, in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner shall be used in such firm, with his privity, he shall be deemed a general partner.

**14.** Suits in relation to the business of the partnership may be brought and conducted by and against the general partners in the same manner as if there were no special partners.

**15.** No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits.

**16.** If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital with interest.

**17.** A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management, and any remuneration of special partners or any other persons acting as servants or agents for any such partnership by a share of the profits or otherwise shall not render them liable as general partners; but he shall not contract any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise. If he shall interfere contrary to these provisions he shall be deemed a general partner.

**18.** The general partners shall be liable to account to each other and to the special partners for their management of the concern, both in law and equity, as other partners are now by law.

**19.** Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage; and shall also be liable to an indictment for a misdemeanor, punishable on conviction by fine or imprisonment or both, in the discretion of the Court by which he shall be tried.

**20.** Every sale, assignment or transfer of any of the property or effects of such partnership made by such partnership when actually insolvent or in contemplation of insolvency, or after or in contemplation of a declaration of insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership; and every judgment confessed, lien created, or security given by such partnership, under the like circumstances and with the like intent, shall be void as against the creditors of such partnership.

**21.** Every such sale, assignment or transfer of any of the property or effects of a general partner, made by such general or special partner when actually insolvent, or in contemplation of a declaration of insolvency, or after or in contemplation of a declaration of insolvency of the partnership, with the intent of giving to any creditor of his own or of the partnership a preference over other creditors of the partnership, and every judgment confessed, lien created, or security given by any such partner, under the like circumstances and with the like intent, shall be void as against the creditors of the partnership.

**22.** Every special partner who shall violate any of the provisions of the two last preceding sections, or who shall concur in or assent to any such violation by the partnership or by any individual partner, shall be liable as a general partner.

**23.** In case of the insolvency or bankruptcy of the partnership no special partner shall under any circumstances be allowed to claim as a creditor until the claims of all the other creditors of the partnership shall be satisfied.

**24.** No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the Colonial Secretary's office, in which the original certificate was recorded, and published once in each week, for four weeks, in the *Royal Gazette*, and any other local newspaper published in this colony.

## SCHEDULE OF FORMS.

No. 1.—Certificate of Formation of Limited Partnership.

This is to certify that we, whose names are undersigned, are desirous of forming a limited partnership, and

1st. That the name or firm under which such partnership is to be conducted is: (here insert the name or firm, as "George Thompson," or "Thompson & Black," as the case may be.)

2nd. That the general nature of the business intended to be transacted by such partnership is: (here insert the general nature of the business, as the buying and selling at wholesale and retail, of tobacco, snuffs and cigars, and such other articles as are usually bought and sold by persons trading as tobacconists or dealers in tobacco.)

3rd. That the names of all the general and special partners interested in the said co-partnership are as follows: (here insert the names and places of residence of each partner, and specify which are general and which are special partners, as thus: George Thompson, James Black, Henry Lloyd and Alfred Smee; that the said George Thompson is a general partner, and his place of residence is in ; that the said James Black is a general partner, and his place of residence is also in ; that the said Henry Lloyd is a special partner, and his place of residence is in ; and that the said Alfred Smee is a special partner, and his place of residence is in ; as the case may be.)

4th. That the amount of capital which each of the said special partners has contributed to the common stock of the said partnership is as follows: (here insert as thus, or as the case may be,—The said Henry Lloyd the sum of , and the said Alfred Smee the sum of ).

5th. That the period at which the said partnership is to commence is the day of 18 (insert the date, which should be after the certificate is filed and recorded); and the period at which the said partnership is to terminate is the day of 18 (insert the date).

As witness our hands, on this day of 18

(Signed), George Thompson,
James Black,
Henry Lloyd,
Alfred Smee.

No. 2.—Notarial Certifcate.

On this day of 18 , before me, A. B., of St. John's, (or as the case may be) Notary Public, duly admitted and sworn and practising in St. John's (or as the case may be) aforesaid, personally came the above named George Thompson, James Black, Henry Lloyd and Alfred Smee, to me known to be the persons described in and who signed the above certificate, and who severally acknowledged to me that they severally signed the said certificate.

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No. 3.—Affidavit to be Filed with Certificate.

George Thompson of this city maketh oath and saith:

That he is one of the general partners named in the above written (or annexed) certificate, and that the said amounts specified in the said certificate to have been contributed by each of the special partners, in the said certicate named, to the common stock of the said partnership, in the said certificate also named, have been actually and in good faith paid in cash (or in property at its actual cash value, specifying the general description of the property, as the case may be).

Sworn, &c.

(Signed), George Thompson.

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No. 4.—Advertisement of Terms of Partnership.

Similar in effect to form No. 1.

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No. 5.—Affidavit of Publication by Printer of Newspaper.

A. B, of , maketh oath and saith that he is printer of the newspaper known as the (insert name of paper), published daily or weekly at (insert place of publication of newspaper), and that the advertisement, a copy whereof is hereto annexed, was published in said newspaper for six weeks successively, that is to say: in the issues of said newspaper, dated respectively the day of , the day of , the day of , the day of , and the day of (insert dates when advertisement appeared).

Sworn, &c.

(Signed), A. B.

# CHAPTER 99.

## Of the Compromises of Partners and Joint Debtors.


SECTION
1.—Compromises of one or more partners of firms with creditors.
2.—Memorandum of release or compromise.
3.—Responsibility and right of the other co-partners.
4.—Liability of party compromising to contribute.
5.—Preceding provisions extended to joint debtors.


**1.** Whenever any co-partnership firm shall be dissolved by mutual consent or otherwise, any one or more of the individuals who was or were embraced in such co-partnership firm may make a separate composition or compromise with any one or all of the creditors of such co-partnership firm; and such composition or compromise shall be a full and effectual discharge to the debtor or debtors making the same, and to them only, of and from all and every liability to the creditor or creditors with whom the same is made or incurred by reason of his or their connection with such co-partnership firm.

**2.** Every such debtor or debtors making such composition or compromise shall take from the creditor or creditors with whom he may make the same a note or memorandum in writing, exonerating him or them from all and every individual liability incurred by reason of such connection with such co-partnership firm, which note or memorandum may be given in evidence by such debtor or debtors in bar of such creditors' right of recovery against him or them; and if such liability shall be by judgment in any court of record in this colony, then on a production to and filing with the clerk thereof the said note or memorandum in writing, duly acknowledged by the party or parties making the same, in the same manner as satisfaction of judgment is now required by law to be acknowledged, such clerk shall discharge said judgment of record so far as the said compromising debtor or debtors shall be concerned.

**3.** Such compromise or composition with an individual member of a firm shall not discharge the other co-partners, nor shall it impair the rights of the creditor to proceed at law or in equity against the members of such co-partnership firm as have not been discharged. The member or members of such co-partnership firm so proceeded against shall be permitted to set off any demand against the said creditor or creditors which could have been set off had such suit been brought against all the individuals composing such firm; nor shall such compromise or discharge of an individual of a firm prevent the other members of such firm from availing themselves of any defence at law or equity that would have been available had not this chapter been passed, except that they shall not set up the discharge of one

individual as a discharge of the other co-partners, unless it shall appear that all were intended to be discharged.

**4.** Such compromise or composition of an individual of a firm with a creditor of such firm shall in nowise affect the rights of the other co-partners to call on the individual making such compromise for his rateable proportion of such co-partnership debt, the same as if this chapter had not passed.

5. The above provisions in reference to co-partners of a firm shall extend to joint debtors, who may individually compound or compromise for their joint indebtedness, with the like effect in reference to creditors and to joint debtors of the individuals so compromising as is above provided in reference to co-partners.

# CHAPTER 100.

## Of the Liabilities of Carriers by Water.

SECTION 1.—Interpretation. 2.—Duties and liabilities of carriers by water.

**1.** In this chapter, unless the context otherwise requires,—

(*a.*) The expression "goods" means and includes goods, wares, merchandize, and articles of any kind whatsoever;

(*b.*) The expression "valuable securities" includes every document forming the title or evidence of the title to any property of any kind whatsoever.

**2.** (1.) Carriers by water shall, at the times and in the manner and on the terms of which they have respectively given public notice, receive and convey, according to such notice, all persons applying for passage, and all goods offered for conveyance, unless in either case there is reasonable and sufficient cause for not doing so;

(2.) They shall be responsible not only for goods received on board their vessels, but also for goods delivered to them for conveyance by any such vessel, and they shall be bound to use due care and diligence in the safe keeping and punctual conveyance of such goods, subject to the provisions hereinafter made;

(3.) Carriers by water shall be liable for the loss of or damage to the personal baggage of passengers by their vessels; and the oath or affirmation of any such passenger shall be *prima facie* evi-

dence of the loss of or damage to such articles and of their value: Provided that such liability shall not extend to any greater amount than two hundred dollars, or to the loss of or damage to any such valuable articles as are mentioned in sub-section (*c.*) following, unless the true nature and value of such articles so lost or damaged have been declared and entered, as provided by the said sub-section (*c.*)

(4.) They shall be liable for the loss of or damage to goods or personal baggage intrusted to them for conveyance as aforesaid, when caused by the fault or neglect of themselves, their agents, servants or employés:

(5.) Provided that they shall not be liable to any extent whatsoever to make good any loss or damage happening without their actual fault or privity, or the fault or neglect of their agents, servants or employés:

(*a.*) To any goods or personal baggage on board any such vessel, or delivered to them for conveyance therein, by reason of fire or the dangers of navigation;

(*b.*) Arising from any defect in or from the nature of the goods themselves, or from armed robbery, or other irresistible force;

(*c.*) To any gold, silver, diamonds, watches, jewels or precious stones, money or valuable securities, or articles of great value not being ordinary merchandize, by reason of any robbery, theft, embezzlement, removal or secreting thereof, unless the true nature and value thereof has, at the time of delivery for conveyance, been declared by the owner or shipper thereof to the carrier, or his agent or servant, and entered in the bill of lading or otherwise in writing.

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# CHAPTER 101.

## Of the Currency.

SECTION
1.—Denomination of money to be in dollars and cents.
2.—British sovereign legal tender for four dollars and eighty cents.
3.—Gold eagle coined after 1834, legal tender for nine dollars and eighty-five cents.
4.—Silver coins of United Kingdom shall pass current after the aforesaid rate.
5.—Governor in Council power to import coins.
SECTION
6.—Five copper or bronze cents to be a legal tender for five cents silver, &c., &c.
7.—Gold and silver coins shall be of same standard of fineness as coins of United Kingdom.
8.—Coins formerly imported a legal tender.
9.—Weight of gold coins, &c.
10.—Person counterfeiting any coin shall be guilty of felony; Penalty, &c.
11.—Penalty for uttering.

**1.** The denomination of money in the currency of this colony shall be dollars and cents, in which currency the cent shall be one hundredth part

of a dollar, and all accounts shall be kept, all moneys paid and received, all verdicts received and judgments entered, and other legal proceedings taken in such currency. No statement of account of any debt contracted within this colony by parties resident within this colony, shall be binding or valid unless the same shall be rendered, stated or declared in dollars and cents.

2. The British sovereign of lawful weight shall be held to be equal to, and shall be a legal tender, and pass current for four dollars and eighty cents, currency; and all parts of the sovereign shall pass current and be a legal tender in currency after the like rate, according to the proportion they respectively bear to the sovereign.

3. The gold eagle of the United States coined after the first July, eighteen hundred and thirty-four, and while the standard of fineness for gold coins then fixed by the laws of the United States remains unchanged, and weighing ten penny-weights, eighteen grains, troy weight, shall pass current and be a legal tender for nine dollars and eighty-five cents, currency; and all multiples and parts of such eagles of like date and proportionate weight shall pass current and be a legal tender in currency after the like rate according to the proportion they respectively bear to the eagle.

4. The silver coins of the United Kingdom, while lawfully current therein, shall pass current and be legal tender for sums in currency after the rate fixed as aforesaid, for the gold coins of the United Kingdom, according to the proportion such silver coins bear to such gold coins: Provided that no tender in silver coin to a greater amount than ten dollars shall be valid.

5. The Governor in Council may obtain and import such quantity of copper or bronze cents and half cents as may be necessary for the purposes of this chapter, which cents and half cents shall be a legal tender for any amount not exceeding twenty-five cents; no other copper or bronze coins other than British sterling pence and half pence of bronze, and the said bronze or copper cents and half cents imported as aforesaid shall pass current in this colony.

6. Nothwithstanding any existing custom or usage, the copper or bronze cents or half cents to the value of five cents obtained or imported as aforesaid, shall be a legal tender in exchange for the five cent silver coin of this colony; ten of the said cents shall be a legal tender in exchange for the silver ten cent coin; twenty of the said cents a legal tender in exchange for the silver twenty cent coin; and twenty-five of the said cents shall be a legal tender in exchange for the twenty-five cent silver coin of this colony, if the Governor in Council shall see fit to import and put in circulation coins of the last denomination.

7. Such gold and silver coins representing dollars or multiples or divisions of the dollar, currency, as Her Majesty shall see fit to direct to

be struck for that purpose, shall by such names and at such rates, and for such amounts as Her Majesty by her proclamation, shall assign, pass current and be a legal tender in this colony; the standard of fineness of such coins being the same as that now adopted for coins of the United Kingdom, and their intrinsic value bearing the same proportion to their current value as British coins respectively bear to their current value under this chapter.

**8.** All gold, silver, copper, and bronze coins, heretofore imported by the Governor in Council into this colony, shall be a legal tender under this chapter.

**9.** Gold coins current under this chapter shall be a legal tender by tale so long as they shall not want more than two grains of the weight assigned to them by this chapter, or by Her Majesty's proclamations: Provided that in any one payment above two hundred dollars the person paying may pay, or the person receiving may insist on receiving the said British gold coins by weight, at the rate of eighteen dollars and sixty-nine and a half cents, per ounce troy, and the said gold coins of the United States by weight at the rate of eighteen dollars and thirty-one cents per ounce troy.

**10.** Any person who shall falsely make or counterfeit any coin resembling or apparently intended to resemble, or pass for any gold or silver coin current under or by virtue of this chapter, or any proclamation thereunder, or who shall import into this colony any such false or counterfeit coin, shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned with hard labour, for any term not exceeding four years, and every such offence shall be deemed to be complete although the coin so made or counterfeited shall not be in a fit state to be uttered or the counterfeiting thereof shall not be finished or perfected.

**11.** Any person, who shall tender, utter, or put off any such false or counterfeit coin, knowing the same to be false or counterfeit, shall be guilty of a misdemeanour, and being convicted thereof shall be imprisoned with hard labour for any term not exceeding one year.

# CHAPTER 102.

## Of Weights and Measures, and the Inspection of Lumber.


SECTION
1.—Standard of weights and measures.
2.—Standard sets to be kept by Receiver General—duplicates.
3.—Governor to appoint persons to prove duplicates—marking.
4.—Governor to appoint inspectors of weights and measures.
5.—Inspector to adjust and mark weights, &c.
6.—Weights, &c., to be sent to inspector if requiring adjustment.
7.—Inspector may condemn old measures, &c.
8.—Penalty for counterfeiting inspector's mark or using condemned measures.
9.—Inspector to visit places of business once in three months, and inspect weights.—Penalty for short weights.
10.—Use of steelyards and wooden beams unlawful.
11.—Penalty for using weights and measures not marked.
12.—Standard weight of grain, &c.
13.—Standard weight of vegetables and seeds.
14.—Bushel to mean bushel by weight.

SECTION
15.—Salt to be sold by weight.
16.—Coals to be sold by weight—exception.
17.—Fresh meat and hay.
18.—Standard weight of loaves of bread—penalty. Prosecutions to be commenced within three days.
19.—Standard weight of biscuit, flour, pork, &c.
20.—Regulations for sale.
21.—Barrel of fresh herring to contain thirty-two gallons. Barrel to be inspected and stamped.
22.—Guaging rods to be same as used in Customs.
23.—Surveyors of lumber.
24.—Their duties.
25.—Size of shingles.
26.—Penalty when surveyor of lumber neglects duty.
27.—Penalty for selling lumber unsurveyed, &c.
28.—Fees payable to inspectors of weights and surveyors of lumber.
29.—Offenders may be imprisoned.
30.—Penalty and mode of recovery.


**1**. All weights and measures used in this colony shall be according to the standard established by an act passed in the parliament of Great Britain and Ireland, in the fifth year of the reign of his late Majesty King George the Fourth, entitled "An act for ascertaining and establishing the uniformity of weights and measures."

**2**. A complete and properly verified set of the said weights and measures shall be kept by the Receiver General in the Customs department, and shall constitute the standard by which all weights and measures shall be tried, proved and stamped, and the Receiver General shall cause duplicates thereof to be made as the Governor in Council shall deem necessary, for the use of the inspectors to be appointed under this chapter or otherwise for the use of the colony.

**3**. The Governor in Council shall appoint a person to prove all duplicates, which, when proved and marked with the letters V. R. or the initials of the then reigning monarch, and the letters N. F. L., together with the initials of the person proving the same, shall be held as standards.

**4**. The Governor in Council shall appoint persons to be inspectors of weights and measures in such places as may be deemed necessary, and each of such inspectors shall be sworn before a Justice faithfully to dis-

charge his duty, and whilst in office he shall be provided with a duplicate or standard set of weights and measures.

**5.** The inspector shall, when required, inspect and adjust all beams, weights and measures brought to his office according to the said standard, and he shall stamp or mark thereon the letters V. R. or the initials of the the reigning sovereign, and also his own proper initials.

**6.** When any beams, scales, weights or measures, capable of being removed and sent to the office of the inspector shall require adjustment, they shall be sent by the owner to such office for that purpose.

**7.** The inspector shall condemn all liquid and dry measures that may require repairs, and all beams, weights and scales that are deteriorated from age, or otherwise incapable of being adjusted, and efface the inspector's mark thereon.

**8.** Any person who shall counterfeit the marking or stamping of the inspector on any beam, scale, weight or measure or shall use any such beam, scale, weight or measure when condemned, shall forfeit and pay a penalty not exceeding forty dollars.

**9.** The inspector shall, with or without constables, in the day time, once in three months or oftener if he shall see cause, visit all places of business and vessels where any commodity is sold or exchanged by weight or measure, and inspect all beams, scales, weights, and measures and seize all such as are not marked as aforesaid; and any person refusing admission to such inspector, or obstructing such inspection, shall forfeit a sum not exceeding forty dollars; and upon proof that any beam, weight or measure so seized is short of or exceeds the standard, the person having the same in his possession shall forfeit a sum not exceeding twenty dollars.

**10.** The use of steelyards, except for the weighing of hay or straw, and the use of wooden beams for weighing, is hereby declared unlawful.

**11.** Any person who shall use a beam, scale, weight or measure, in the sale or exchange of any commodity not assayed and stamped or marked as aforesaid, or who shall alter the same after being so assayed, stamped or marked, or who shall use steelyards, except for the purpose of weighing hay or straw, or who shall use a beam made of wood, shall forfeit a sum not exceeding twenty dollars.

**12.** The standard weight of each imperial bushel of grain exposed or offered for sale in this colony shall be as follows:

Wheat shall weigh sixty pounds.
Rye shall weigh fifty-six pounds.
Indian corn shall weigh fifty-seven pounds.
Barley shall weigh forty-eight pounds.

Oats shall weigh thirty-eight pounds.
Pease shall weigh sixty pounds.
Beans shall weigh sixty pounds.

All such grain shall be of dry, sound quality, and all such weights shall be avoirdupois.

**13**. The following shall be the standard weights which in all cases shall be held to be equal to the imperial bushel of the articles opposite to which they are respectively set, namely:

Potatoes, turnips, carrots, parsnips, beets and onions, sixty pounds.
Flax seed, fifty pounds.
Hemp seed, forty-four pounds.

And when any of the articles aforesaid shall be sold by the barrel, every such barrel shall contain at least three bushels of the weight aforesaid. All such potatoes, turnips, carrots, beets and onions and other articles above mentioned shall be in sound condition, and all such weights shall be avoirdupois.

**14**. Upon any sale and delivery of any description of grain, pulse or seed or other articles mentioned in this chapter, and in every contract for the sale or delivery of any such grain, pulse, seeds or other articles, the bushel shall be taken and intended to mean the weight of a bushel as regulated by this chapter, and not a bushel in measure or according to any greater or less weight.

**15**. Salt shall be sold by weight and not by measure; and any person who shall sell or dispose of salt otherwise than according to the standard of weight hereby established, shall forfeit a sum not exceeding twenty dollars.

**16**. Coals shall be sold by weight, and each ton shall contain two thousand two hundred and forty pounds; or, at the option of the purchaser, coals may be sold by measures containing respectively two hundred and twenty-four pounds and five hundred and sixty pounds avoirdupois of dry coal, struck or water measure, under a penalty not exceeding ten dollars: Provided that this section shall not apply to the sale of a cargo of coal when the same may be sold wholesale by the chaldron.

**17**. All fresh meats imported for sale, and all hay imported for sale in screwed or pressed packages, shall be weighed by the vendor, who shall attach to each piece of meat and package of hay a ticket marked with the weight thereof; and such meats and packages purchased shall be re-weighed by the vendor in the presence of the purchaser, if desired, at the time of delivery, under a penalty of not exceeding ten dollars for each refusal so to do.

**18**. Loaves of bread intended for sale shall be made of the following weights, namely: four pounds, two pounds, one pound, and eight ounces,

and shall have stamped or marked thereon the initials of the maker and the weight of the loaf; and the vendor of bread shall keep a scale and weights, and shall if required, weigh the bread for the satisfaction of the purchaser; and bread offered for sale of short weight shall be forfeited and may be seized by the purchaser or intending purchaser, or any peace officer, and delivered to any Justice, who shall dispose of the same for the benefit of the poor: Provided that this section shall not apply to loaves made to order and rasped by the desire of the customer, nor to loaves or cakes weighing less than eight ounces. Prosecutions for breach of this section shall be commenced within three days after the offence shall have been committed.

**19.** The following shall be the standard net weight of articles or provisions, whether imported into or produced or manufactured in this colony, and offered for sale, namely:

Biscuit, the bag, one hundred and twelve pounds; the half bag, fifty-six pounds.

Flour, corn meal and oatmeal, the barrel, one hundred and ninety-six pounds; the half-barrel, ninety-eight pounds.

Pork, beef and jowls, the barrel, two hundred pounds; the half-barrel, one hundred pounds.

**20.** Purchasers of the articles enumerated in the foregoing section may demand that the same be weighed by the vendor, and if any be found of less than the standard net weight there shall be a proportionate deduction made by the vendor in the price agreed upon; and purchasers of butter, imported into or made in this colony, may demand that the same be weighed at the time of purchase by the vendor who shall make a fair allowance for weight of packages; and if any vendor shall refuse to weigh any of the said articles when required, or to make a reduction in the price where there ought to be a reduction in accordance with the provisions of this section, he shall be liable to a penalty not exceeding twenty dollars.

**21.** When fresh herrings are bought or sold by the barrel, every such barrel shall be capable of containing thirty-two gallons water or struck measure; and every such barrel, used as a measure, shall be inspected and stamped by an inspector of weights and measures.

**22.** Guaging rods used in the guaging of oil, spirits and other liquids, shall be of the same size, dimensions and description as those used in her Majesty's Customs, and no other.

**23.** The Governor in Council shall appoint persons to be surveyors of lumber, who shall, previously to their entering upon the duties of their office, give security to Her Majesty, and shall be sworn before a Justice faithfully to discharge the duties of such office,

**24**. The duties of such surveyors of lumber shall be to survey and measure upon request made by the vendor or importer of all timber, plank and lumber, imported into or the produce of this colony which may be offered for sale, and to mark the quantity therein upon each piece, and such as shall not be merchantable, to mark thereon the letter R. (for "refuse"); and also upon the like request to survey all shingles made in or imported into this colony and offered for sale, and to mark each bundle of shingles which shall not be of standard size with the letter R. (for "refuse").

**25**. The standard size of each shingle shall be eighteen inches long, and of each bundle of shingles shall be twenty inches wide and twenty-five tiers high, well and closely packed; and if any shingles shall be falsely or fraudulently packed they shall be forfeited; and all shingles marked with the letter R. by the surveyor of lumber shall be sold as refuse.

**26**. If a surveyor of lumber shall, after having received twelve hours' notice from the importer or vendor, requiring such surveyor to survey or measure any timber, plank, lumber or shingles, refuse or neglect so to do, (unless unavoidably prevented by sickness or by being employed in the survey of timber, plank, lumber or shingles elsewhere), he shall be liable to a penalty not exceeding twenty-five dollars; and if any surveyor of lumber shall be unfaithful or negligent in the discharge of his duty he shall be liable to a penalty not exceeding one hundred dollars, and shall be incable of acting as a surveyor of lumber thereafter; and if any person shall act as a surveyor of lumber, except he be appointed in manner aforesaid, he shall be liable to a penalty not exceeding forty dollars for each offence.

**27**. If any person shall deliver or cause to be delivered any timber, plank, lumber or shingles, being sold by admeasurement, before the same shall have been surveyed by a duly appointed surveyor of lumber, such person shall be subject to a penalty not exceeding twenty-five dollars for each offence.

**28**. Inspectors of weights and measures appointed under this chapter shall be entitled, in addition to any salaries paid them by the Government, to receive from the owners of weights and measures the following fees for all weights and measures assayed and marked as aforesaid, namely:

Five cents each for weights of and under one pound.
Ten cents each for weights over one pound.
Ten cents for a beam and scale, and ten cents for a measure:

Provided that such fees shall be demanded and payable only once in each year.

Surveyors of lumber appointed under this chapter shall be entitled to receive from the vendors or importers of all timber, plank, lumber and shingles, surveyed and measured or marked as aforesaid, the following fees, namely:

For every ton of timber, twenty five cents,

For every thousand superficial feet of plank, board or lumber, thirty-eight cents.

And for every thousand shingles, five cents.

**29.** Any person offending against any of the provisions of this chapter, where no specific penalty is prescribed, shall for each offence be liable to a penalty not exceeding twenty dollars, and in all cases on default of payment, where no imprisonment is mentioned, may be imprisoned for a period not exceeding fourteen days.

**30.** All penalties and forfeitures under this chapter may be recovered, together with costs, in a summary way before a Justice; and where not otherwise herein provided for, one-half of such penalties and forfeitures shall be paid to the party prosecuting the offender to conviction, and the other half shall be paid to the Receiver General for the use of the colony.

# CHAPTER 103.

## Of the Culling of Cod-fish.

SECTION
1.—Culler of cod-fish must be sworn.
2.—Form of oath.
3.—Culler must obtain license under certain circumstances.
4.—How license obtained.
5.—How long license shall remain in force.
6.—Penalty for contravention.
SECTION
7.—Penalty for contravention.
8.—Culler must be sworn and licensed under certain circumstances.
9.—Arbitration in case of dispute.
10.—Stipendiary Magistrates, &c., must transmit list to Colonial Secretary.
11.—Who are empowered to grant licenses.
12.—Mode of recovery of penalty.

**1.** No person shall cull codfish as between vendor and vendee in place or places under the operation of this chapter, unless such person shall have been previously sworn before a stipendiary Magistrate or Justice of the Peace, faithfully and without fear, favour or affection, to discharge the duties of a fish culler.

**2.** The oath to be taken by such culler shall be in the form of schedule A to this chapter.

**3.** No person shall cull codfish, as between vendor and vendee, in the towns of St. John's John's, Harbour Grace, Carbonear, Trinity, Catalina, King's Cove, Greenspond, Bonavista, Twillingate, Fogo, Burgeo, Harbour Briton, Gaultois, and such other ports or places as the Governor in Council may, by proclamation, direct, without first having obtained a culler's license from a stipendiary Magistrate or Justice of the Peace.

**4.** No person shall be licensed as a culler to cull codfish, as between vendor and vendee, in any of the places that may come under the operation of this chapter, unless upon the recommendation of three persons of known experience as cullers, which recommendation shall state that the applicant for such license is competent to perform the duties of a culler of codfish, and is a fit and proper person to be granted a culler's license under this chapter.

**5.** The license to be granted as aforesaid, shall be in the form of schedule B to this chapter: Provided that such license shall continue in force for a period of five years, and may be renewed at the expiration of that time for a like period, and so on from time to time for the number of years aforesaid. The fees for such license shall be one dollar for the first license, and fifty cents for each renewal of license; the said fees shall be paid to the Receiver General for the use of the colony.

**6.** Any person who shall cull codfish, as between vendor and vendee, in any of the aforesaid towns, or in any other places under the operation of this chapter, without being the holder of a license, shall be liable to a fine not exceeding ten dollars, or in default of payment thereof to imprisonment for a period of not exceeding ten days for said offence.

**7.** Any person who shall accept from any vendor or vendee, by whom he shall be employed, or from any person on behalf of such vendor or vendee, any payment, reward, or gift of any kind whatsoever, for his services as a culler of codfish other than the market rate for culling codfish, shall be subject to a penalty of not exceeding fifty dollars, or in default of payment thereof, imprisonment for a period of not exceeding two months for any such offence as aforesaid contained in this section, and also shall, on conviction thereof, forfeit his license as a culler of codfish.

**8.** Any person who goes from Saint John's, Harbour Grace, Carbonear, Twillingate, Fogo, Greenspond, Bonavista, King's Cove, Catalina, Trinity, Harbour Briton, Burgeo, Gaultois, to any port in this colony and its dependencies, in the capacity of a culler for the purpose of culling fish for export, shall be sworn and licensed, and shall otherwise be subject to the provisions of this chapter.

**9.** In case of any dispute arising between a vendor and vendee as to the culling of any codfish by any licensed culler engaged in culling the fish of such vendor, such dispute shall be forthwith referred to the immediate determination of two sworn cullers, one to be appointed by the vendor or his agent, and one by the vendee or his agent, and the decision of such sworn cullers shall be final and binding between the parties; and in case the said two arbitrators cannot agree, they shall call in the assistance of a third competent person, and the decision of any two such arbitrators shall be final and binding between the parties. The fee for such arbitrament shall be one dollar to each culler and five dollars for umpire, one-half to be paid by each party.

**10.** Every stipendiary Magistrate or Justice of the Peace granting such licenses as aforesaid, shall, in each year, make out, sign, and transmit to the Colonial Secretary a statement shewing the person or persons to whom such license or licenses has or have been granted, and the date of such license or licenses.

**11.** Stipendiary Magistrates or Justices of the Peace are hereby empowered to administer the oath, provided in schedule A to this chapter, to applicants applying for a culler's license, in accordance with the provisions hereof.

**12.** All penalties under this chapter shall be recovered upon complaint and summary conviction before a stipendiary Magistrate, by any one who shall make such complaint and prosecute the offender to conviction.

## SCHEDULE A.

### Culler's Oath.

I, A. B., do solemnly swear that I will honestly, faithfully, and impartially, and to the best of my ability, cull all fish entrusted to me for culling without fear, favour, or affection of or to any vendor or vendee of such fish.

(Place,) (Date,)

A. B.

Sworn before me, at ,
this day of , 189 .

C. D.,
J. P., (or as the case may be).

N. B.—This oath must be signed and endorsed on the culler's license.

## SCHEDULE B.

### Culler's License.

This is to certify that A. B., of , has been sworn before me, according to the provision of chapter 103 of the Consolidated Statutes, and that he is hereby licensed according to the provisions of the said chapter for that purpose.

(Place,) (Date,)

C. D.,
J. P., (or as the case may be).

# CHAPTER 104.

## Of the Inspection of Pickled Fish and Fish Oils.


SECTION
1.—Governor in Council may appoint inspectors of pickled fish and casks; inspectors to give bonds.
2.—Inspectors to provide branding irons.
3.—Inspection, &c., to be in presence of inspector.
4.—Duty of inspectors; provision for packages
5.—Casks to be inspected and branded.
6.—All pickled fish for exportation to be inspected and branded, and certificate of quantity and quality given; proviso; fish not inspected at place of packing.
7.—Packages, how branded or marked; casks to contain fish of same kind and quality; Inspector may separate sound and unsound fish and condemn unsound; inspected fish to be repacked in presence of inspector; fish may be re-inspected; owner may recover cost of re-inspection from inspector; capacity of tierce, half-tierce, barrel, half-barrel; casks to be marked with description, weight, quality of fish, name of inspector, place of inspection; date of inspection, &c.
8.—Inspector's fees; persons causing inspection may employ cooper; subject to directions of inspector.

SECTION
9.—Penalty for altering inspected fish.
10.—Penalty upon inspector for breach of duty.
11.—Governor may appoint chief inspector of pickled fish.
12.—His powers, duties and liabilities.
13.—Governor in Council may appoint inspectors of fish-oils; inspectors to give security.
14.—Provided with utensils.
15.—Inspecting to be in presence of inspectors.
16.—Duty of inspectors.
17.—Fish oil for exportation to Dominion of Canada to be inspected, &c.
18.—Governor in Council to fix standards; whale oil, seal oil, porpoise oil, cod oil, cod-liver oil, herring and other oils.
19.—Casks to be branded.
20.—Definition of "fish-oils."
21.—Inspector's fees.
22.—Penalty for adulteration, &c., of inspected casks.
23.—Penalty for branding without actual inspection, &c.
24.—Recovery and appropriation of penalties.
25.—Granting certificates without personal inspection a misdemeanor. Punishment; appeal; hearing of appeal.


### INSPECTORS AND INSPECTION OF PICKLED FISH.

**1.** The Governor in Council may appoint inspectors of pickled fish and of casks used for packing the same, who shall give bond in the sum of four hundred dollars, with two sureties in the sum of two hundred dollars each, to Her Majesty, for the faithful discharge of their duties, and they shall be sworn before a Justice of the Peace faithfully to perform the same. Such inspectors shall be known as fish inspectors.

**2.** Such fish inspectors shall provide themselves with proper branding irons or stencil plates, for the purpose of branding or stencilling such casks as may by them be inspected, pursuant to this chapter.

**3.** The inspecting, culling, classing, weighing, packing, branding, or stencilling of any fish, shall be done in the presence and sight of a fish inspector.

**4.** It shall be the duty of such fish inspectors to see that all kinds of split, whole, pickled, or salted fish, intended for packing or barrelling, and submitted to them for inspection, have been cured and preserved sweet, free from taint, rust, saltburn, oil, or damage of any kind. And all fish intended for exportation, and branded or stencilled as inspected, shall be

well and properly packed in good, tight, and substantial casks, which shall be made of the materials and in the manner following:

Tierces, barrels and half-barrels shall be made of sound, well seasoned, split or sawn staves, free from sap, and in no case to be of hemlock, and the heading shall be of pine, fir or spruce, free from sap, and planed on the outside, and shall be at least three quarters of an inch in thickness.

The sawn staves shall be three quarters of an inch, and clove staves five-eighths of an inch in thickness, and in neither case to be less than five-eighths of an inch in thickness at the bilge when dressed.

Staves for salmon, trout and mackerel barrels shall be twenty-eight inches in length, and the heads between the chimes, seventeen inches.

Staves for herring barrels shall be twenty-seven inches in length, and the heads between the chimes, shall be seventeen inches.

Tierces to be thirty-one inches in length and nineteen and a half inches across the head.

All casks shall be hooped one-third of their whole length from each chime with sound good hoops of not less than one inch in width.

**5.** All casks intended to be used for packing pickled fish shall be inspected by a fish inspector, who shall brand or print the initials of his Christian name and the whole of his surname on the bung stave, which must be of hardwood. The makers of all tierces, barrels and half-barrels, shall brand, stencil or punch the initials of their christian names and their whole surnames at or near the bung staves of such tierces, barrels and half-barrels, under a penalty of twenty cents for every package not so branded.

**6.** All pickled fish cured for exportation shall be inspected, weighed and branded or marked in accordance with this chapter, and a certificate stating the quality and quantity thereof so inspected, and for whom inspected, and shipped on board any vessel, shall be granted by the fish inspector free of cost. Provided that when fish are not inspected at the place of packing, the packer's name and the quality of the fish must be marked in paint, branded or punched on each barrel, half-barrel or package; and when they are inspected at the place of sale, the fish inspector shall empty out ten packages in each hundred of any lot submitted to him for inspection, and such inspection of ten packages out of every hundred shall regulate the grade of the fish so submitted for inspection.

**7.** The various kinds of fish to be inspected under this chapter shall be branded or marked of the following denominations, respectively:—

(1.) Salmon, to be branded or marked 'No. 1," shall consist of the best and choicest kind, being well split, the blood being well washed out before being salted, well cured, in the best condition, and in every respect free from taint, rust or damage of any kind.

Those to be marked or branded "No 2," shall comprehend the best salmon that remain after the selection of the first quality, and shall be good, sound, well split and cured fish in the next best condition, and in every respect free from taint or rust.

Those to be branded or marked "No. 3," shall consist of those that remain after the selection of the two first qualities, but must be free from taint.

(2.) Mackerel, to be branded or marked "Mess Mackerel," shall consist of the best and fattest mackerel, being well split, having the blood well washed out before being salted, well cured, in the best condition, and free from taint, rust, or damage of any kind; and shall be such as would have measured when whole not less than fourteen inches from the extremity of the head to the crotch or fork of the tail, and shall have the heads and tails taken off.

Those to be branded or marked "Extra No. 1," shall consist of the best and fattest mackerel, being well split, having the blood well washed out before being salted, well cured, in the best condition, and free from taint, rust, or damage of any kind, and shall measure not less than fourteen inches from the extremity of the head to the crotch or fork of the the tail.

Those to be branded or marked "No. 1," shall consist of the best and fattest mackerel, being well split, having the blood well washed out before being salted, well cured, in the best condition, and free from taint, rust, or damage of any kind, and shall measure not less than thirteen inches from the extremity of the head to the crotch or fork of the tail.

Those to be branded or marked "No. 2," shall comprehend the best mackerel that remain after the selection of the "Extra No. 1" and "No. 1" qualities, and shall be properly split and washed, well cured, and in every respect free from taint, rust, or damage of any kind; and shall measure not less than eleven inches from the extremity of the head to the crotch of the tail.

Those to be branded or marked "No. 3" shall consist of good, sound mackerel, properly washed, well cured, and free from taint or rust, and shall measure eleven inches and upwards from the extremity of the head to the crotch of the tail.

Those to be branded or marked "Large No. 3" shall consist of good, sound mackerel, properly washed, well cured, and free from taint or rust, and shall measure not less than thirteen inches from the extremity of the head to the crotch or fork of the tail.

All mackerel under eleven inches in length, of good, sound quality, and free from taint and rust, or damage of any kind, shall be

branded or marked with the words "Small Spring," or "Small Fall," in the place of a number.

All short, sun-burnt, or ragged mackerel, of whatever class, and not otherwise defective, shall be branded or marked "No. 4."

(3.) Herrings, to be branded or marked "No. 1," shall consist of the largest and best fish;

And those to be branded or marked "No. 2," shall comprehend the best herrings that remain after the selection of the first quality.

All undersized herrings to be branded or marked "No. 3," with the word "small" in addition to the other brands or marks.

All ripped herrings shall be branded or marked with the word "split," in addition to other brands or marks.

All gibbed herrings shall be branded or marked with the word "gibbed," in addition to other brands or marks.

All herrings that are not gibbed or ripped, shall be branded or marked with the word "round," in addition to other brands or marks.

All spring-caught herrings shall be branded or marked with the word "spring," in addition to other brands or marks.

The above shall be well cleansed and cured, and in every respect free from rust, taint or damage.

(4.) Smoked herrings, to be branded or marked "No. 1," shall comprehend the best and fattest fish; and those to be branded or marked "No. 2" shall consist of the poorer, smaller and inferior fish. Both of these qualities shall be well smoked, free from taint, and not burnt or scorched; and no red or smoked herrings shall be so branded or marked, unless they be well and sufficiently saved and cured, and carefully packed in good and substantial barrels or half-barrels; and if in kegs or boxes, the same shall be of well seasoned boards, the sides, top and bottom of not less than half an inch in thickness, and the ends at least three quarters of an inch thick; and the inside measurement of each box shall be eighteen inches long and nine inches broad and eight inches deep, well nailed, and the tops or covers smoothed.

Tainted, burnt, scorched, or badly smoked herrings, shall be considered refuse, and may be branded or marked as such without any other character.

All herrings taken and packed on the coast of Labrador, shall be branded or marked with the word "Labrador," in addition to other brands or marks. All herrings taken and packed on the

coast of Newfoundland shall be branded or marked "N.F.L D.," in addition to other brands or marks.

(5.) Sea trout, to be branded or marked "No. 1," shall consist of the largest, best and fattest kind, being well split, and in every respect free from any taint, rust or damage of any kind.

Those to be branded or marked "No. 2" shall comprehend the best trout that remain after the selection of the first quality, and shall be good, sound fish, free from rust or taint.

(6.) Green cod-fish in barrels, with or without pickle, to be classed "No. 1," shall consist of the best and fattest, being well split and cleansed, well cured, in first rate condition, and in every respect free from taint, salt-burn, rust or damage of any kind, and shall measure at least fifteen inches to the crotch of the tail.

Those remaining after selection of first quality, to class "No. 2," shall be sound, well cured fish, and free from taint, salt-burn, rust or damage of any kind.

(7.) All other kinds of pickled fish, not enumerated therein, and cod-fish tongues, and cod-fish sounds shall be branded or marked as such, and must be sound and well cured, free from taint, salt-burn, rust or damage of any kind.

(8.) Small fish, which are usually packed whole, with dry salt or pickle, shall be put in good casks of the size and materials required by this chapter for the packing of split pickled fish, and shall be packed close edgewise in casks, and properly salted, with good, coarse, wholesome dry salt; and the casks shall be filled full with the fish and salt, and no more salt shall be put with the fish than is necessary for their preservation; and the casks containing such whole fish shall be branded or marked with the denomination of the fish, and a like designation as is prescribed by this chapter in respect of the qualities of other pickled fish.

(9.) All rusty or sour fish, of whatever kind or class, shall be branded or marked with the word "rusty" or "sour," in addition to the other brands or marks.

(10.) No foul or tainted fish, or fish mutilated for the purpose of concealing marks and appearances of illegal capture, or unsizable, shall pass inspection.

(11.) Fish known as pickled fish, that may be cured in bulk, if not inspected and certified as aforesaid, and afterwards packed in barrels, shall be branded and marked with the word "bulk," in addition to other brands or marks.

(12.) Each cask or package of fish shall contain fish of the same kind, or parts of the same kind or quality, properly packed in separate layers, and on every layer of fish so packed in the cask, a sufficient quantity of good, clean suitable salt shall be regularly placed, and in like proportions for other packages, at the discretion of the fish inspectors; and after the cask shall have been properly packed and headed, it shall be filled with clean pickle strong enough to float a fish of the kind so packed.

(13.) Should it appear to the fish inspector that a portion of the fish inspected by him is sound, and another portion unsound, he shall separate the sound from the unsound, repack the sound fish and brand or mark the same according to its quality; and such portion as he judges incapable of preservation, he shall condemn as bad, and mark "refuse," in addition to other marks.

(14.) If any casualty renders it necessary to repack inspected fish, it shall in all cases be done by and in the presence of the fish inspector; and any other person attempting to brand or mark the same shall be liable to a penalty of not more than twenty dollars for every such offence.

(15.) When any fish, branded by any fish inspector, proves unequal in quantity and quality to that which may be indicated by the brand or mark, or deficient in any of the requisites prescribed by this chapter, the owner or purchaser may cause the same to be re-inspected; and if it appear that the defect arose from the condition of the fish, or the bad quality of the cask, or the packing or pickling of the fish at the time of the inspection, he may recover the cost and charges of such re-inspection from the fish inspector who branded or marked the same.

(16.) Each tierce shall contain three hundred pounds, and each half tierce one hundred and fifty pounds; each barrel shall contain two hundred pounds, and each half-barrel one hundred pounds. In each of the above instances the weight shall be clear avoirdupois exclusive of salt and pickle.

(17.) There shall be branded or marked on the head or butt of each cask of pickled fish, in plain, legible letters, after the same has been inspected, classed, weighed and packed, in accordance with this chapter, the description of the fish, the weight and quality contained in the package, the initials of the christian name or names, and the whole surname of the inspector by whom the fish was inspected, and the name of place where he acts as inspector, and the month and the year of inspection.

**8.** The fish inspector, who shall inspect and brand or mark any cask or package of pickled fish in accordance with the provisions of this chapter,

shall be entitled to fees at the following rates, which shall be paid by the person who employed him :—

(1.) For each tierce of salmon or sea trout, fifteen cents.

(2.) For each half-tierce of salmon or sea trout, ten cents.

(3.) For each barrel of salmon or sea trout, ten cents.

(4.) For each half-barrel of salmon or sea trout, five cents.

(5.) For each barrel of mackerel, ten cents.

(6.) For each half-barrel of mackerel, five cents.

(7.) For each barrel of herring, five cents.

(8.) For every half-barrel of herring, three cents.

(9.) For every tierce, empty, one cent.

(10.) For every half-tierce, empty, one cent.

(11.) For every barrel, empty, one cent.

(12.) For every half-barrel, empty, one cent.

The foregoing rates shall be reckoned exclusive of salt, pickle, cooperage, storage, and labor employed in washing, rinsing, cleansing, nailing, and repacking, and pickling any fish.

Provided always that any person causing his fish to be inspected, may employ, at his cost or charges, a cooper to attend upon and assist the fish inspector in the performance of his duty, in which case the fish inspector shall not be allowed any charge for cooperage; and the cooper, so employed, shall be governed and guided solely by the directions which he receives from the fish inspector, with respect to any fish by him inspected, and not by any other person whomsoever.

**9.** Any person who shall, in or from any cask, intermix, take out, or shift any inspected fish, branded or marked, as aforesaid, or put therein other fish, shall forfeit and pay a penalty not exceeding twenty dollars for each cask.

**10.** If the fish inspector shall brand or mark any cask the contents of which he has not duly inspected according to the provisions of this chapter, or if he shall permit any other person to use his brands or marks in violation or evasion thereof, such fish inspector and other person so offending, shall each forfeit and pay, for every cask so branded or marked, a sum of not exceeding ten dollars, and such fish inspector shall be removed from his office.

### Chief Inspector of Pickled Fish.

**11.** The Governor in Council may appoint a chief inspector of pickled fish, and of casks used for packing the same, to whom all fish inspectors appointed under this chapter shall be subordinate.

**12.** Such chief inspector shall have and exercise all the powers conferred upon fish inspectors appointed under this chapter, and shall be subject to all the liabilities and penalties hereby imposed on such fish inspectors, and in addition to such powers he shall have power and authority to re-inspect any number of packages of pickled fish or casks as may have been inspected by any of the said fish inspectors not exceeding the proportion of ten to every one hundred of such packages or casks; and in case he shall find any pickled fish or casks branded or marked contrary to the provisions of this chapter, or that any or either of the said fish inspectors have been guilty of a breach of the provisions thereof, it shall be the duty of the said chief inspector to proceed against the fish inspector who shall have so wrongfully branded or marked such pickled fish or casks, or who shall have been guilty of a breach of any of the provisions of this chapter for the penalties herein provided and in manner herein prescribed: Provided that in case the number of packages of such pickled fish or casks so re-inspected shall be greater than ten or less than twenty, or greater than twenty and less than thirty, or otherwise, as the case may be, such chief inspector shall have power and authority to re-inspect two or three, and not one or two, of such packages or casks, and so on in proportion as the case may be.

### Inspectors and Inspection of Fish Oils.

**13.** The Governor in Council may appoint inspectors of fish oils, and of casks containing the same, who shall give bonds in the sum of two hundred dollars, with two securities in the sum of one hundred dollars each, to Her Majesty, for the faithful discharge of their duties, and they shall be sworn before a Justice of the Peace faithfully to perform the same. Such inspectors shall be known as oil inspectors.

**14** Such oil inspectors shall provide themselves with proper branding irons or stencil plates, for the purpose of branding or stencilling such casks as may by them be inspected, pursuant to this chapter.

**15.** The inspecting, classing, and branding, or stencilling of any fish oil, shall be done in the presence and sight of an oil inspector.

**16.** It shall be the duty of such oil inspectors to see that all kinds of fish oils submitted to them for inspection, shall be free from adulteration of every kind, and contained in good, tight, and substantial packages.

**17.** All fish oil, intended for exportation to the Dominion of Canada, shall be inspected and branded, or marked in accordance with the provisions of this chapter, and a certificate stating the quality thereof so inspected, shall be granted by the fish inspector, free of cost.

**18.** The Governor in Council shall, by regulations or orders, fix and have in charge the standard of fish oils in Newfoundland, and the same shall be classified and branded or marked according to such standard, as follows:—

(1.) Whale oil shall be free from adulteration of every kind, and shall be branded as such, with the class, according to quality, appointed by standard. If number one, "Pale," if number two, "Straw;" if number three, "Brown."

(2.) Seal oil shall be free from adulteration of every kind, and shall be branded as such, with the quality per standard. If number one, "Pale;" if number two, "Tinged;" if number three, "Straw;" if number four, "Brown;" if number five, "Dark Brown."

(3.) Porpoise oil and pothead oil shall be free from adulteration of every kind, and shall be branded according to its respective description, with the quality per standard. If number one, "Pale;" if number two, "Straw;" if number three, "Brown."

(4.) Cod oil shall be free from adulteration of every kind, and shall be branded as such. First quality, "A;" second quality, "B."

(5.) Cod liver oil shall be free from adulteration of every kind, and shall be branded as such. First quality, "A;" second quality, "B."

(6.) Herring and all other fish oils shall be branded as such. First quality, "A;" second quality, "B."

**19.** Casks containing fish oils shall be scribed or branded with such quality: the month and two last figures of the year when inspected, the initials of the christian name, or names, and the entire surname of the oil inspector, the place of inspection, and the word "Newfoundland."

**20.** The designation of "Fish Oils" in this chapter shall include whale, seal, porpoise, pothead, cod, cod liver, herring, and all other kinds of oils derived from fishes and marine animals.

**21.** Every oil inspector who shall inspect and brand or mark any cask or package of fish oil, in accordance with the provisions of this chapter, shall be entitled to fees at the following rates, which shall be paid by the person who shall have employed him:—

(1.) For inspecting and branding each puncheon of oil, eight cents.

(2.) For inspecting and branding each hogshead of oil, six cents.

(3.) For inspecting and branding each tierce of oil, four cents.

(4.) For inspecting and branding each barrel or smaller package of oil, four cents.

(5.) The foregoing rates shall be exclusive of cooperage, labour, and storage, employed or used in connection with such inspection.

**22.** Any person who shall in any way tamper with any cask or package containing oil, or intermix or adulterate any oil therein when such

cask shall have been branded or marked as aforesaid, or shall take thereout any oil, except for purposes of sampling, shall forfeit and pay a penalty not exceeding twenty dollars for every such cask or package.

**23**. If the oil inspector shall brand or mark any cask, the contents of which he has not duly inspected, according to the provisions of this chapter, or if he shall permit any other person to use his brands or marks, in violation or evasion thereof, such oil inspector and other person so offending, shall each forfeit and pay, for every cask so branded or marked, a sum not exceeding twenty dollars; and such inspector shall be removed from his office.

**24**. Penalties by this chapter imposed, may be recovered before a stipendiary Magistrate in a summary way, or in a Court of Record, and shall be paid one-half to the informer and the other half to the Receiver General for the use of the colony.

**25**. The chief inspector of pickled fish or any fish inspector or oil inspector, under this chapter, granting a certificate for fish or oil which he shall not have personally inspected, shall be guilty of a misdemeanor, and may be tried and convicted in a summary manner, before a stipendiary Magistrate, and shall, on conviction, be subject to imprisonment for any period not exceeding six months, or to a fine not exceeding one hundred dollars; and any person subject to imprisonment or fine under this section, may appeal from the judgment or order of such Magistrate to the Supreme Court, on giving sufficient security to prosecute such appeal, and to abide by and perform the order or decree of the said Court thereon. And on the hearing of such appeal, such Court may admit other evidence than that adduced before the Magistrate, and may confirm, vary, or set aside the judgment of such Magistrate, and make such order as to the execution of any judgment, as to such Court may seem meet. The appeal provided by this section may be heard before one Judge, sitting in the Supreme Court, either in St. John's or on circuit.

# CHAPTER 105.

## Of Life Insurance Companies.


SECTION

1.—Provisions of chapter to apply only to life insurance companies.
2.—Company to procure license from Receiver General.
3.—Receiver General to issue licenses.
4.—Company so licensed to transmit statement.
5.—$25,000 deposit.
6.—Receiver General shall receive deposits.
7.—Company shall receive interest on deposits
8.—Before receiving license company shall file in the Colonial Secretary's office certified copy of Charter or Act of Incorporation.
9.—Notice to be given in *Royal Gazette* and one other paper for one month.
10.—Penalty under certain circumstances.
11.—Certain premiums may be collected without deposit.
12.—Provisions for licensed company discontinuing business.
13.—Securities shall be applied *pro rata* towards payment of claim in case of insolvency.
14.—Court may order securities to be transferred to a trustee.

SECTION

15.—License of companies null and void in certain cases.
16.—Provision after expiry or withdrawal of license.
17.—In case of insolvency, policy holders entitled to claim full net value.
18.—Certain rights of the policy holder.
19.—Trustee shall make statement of creditors as appear from books of company.
20.—In what cases policy holder entitled to claim full net amount.
21.—General provision for reinsuring in certain cases.
22.—Trustees shall report to Receiver General once in every six months.
23.—Publication in *Royal Gazette* and two other newspapers to be sufficient.
24.—In event of company ceasing to do business in Newfoundland, Governor in Council may authorize securities to be transferred to company.
25.—Deposits for securities of policy holders in Newfoundland only.

26.—Statement to be annually published in *Royal Gazette* and one other paper.


**1.** The provisions of this chapter shall be deemed to apply only to life insurance companies and to insurance companies doing life and other insurance, so far as relates to life insurance business of such companies, and every such company is hereinafter described as a life insurance company.

**2.** It shall not be lawful for any life insurance company to issue any policy of insurance, or take any risk, or receive any premium, or transact any business of insurance in Newfoundland, or to file any claim in insolvency, without first obtaining a license from the Receiver General of this colony to carry on business in this colony; but the premiums to become due on policies actually issued previous to the first day of November, 1888, may continue to be received by such company.

**3.** The Receiver General shall issue licenses, as aforesaid, so soon as the company applying for the same shall have deposited with him the sum of money or securities hereinafter mentioned and required, and such license shall specify the business to be carried on by the company.

**4.** Every company so licensed shall transmit annually, on or before the first day of March a statement, verified by the oath of the agent in this colony, containing the particulars mentioned in the schedule to this chapter, applicable to the case, and a copy of such statement shall be published in the *Royal Gazette* of this colony, and laid before the Legis-

lature in like manner as the returns from incorporated companies or societies.

5. The deposit to be made, as aforesaid, shall be as follows:—By every life insurance company a sum not less than twenty-five thousand dollars in cash, or other securities as hereinafter mentioned.

6. It shall be lawful for the Receiver General, with the approval of the Governor in Council, to receive the deposit of such company, under this chapter, in Newfoundland, British, British colonial, or foreign government, or other approved securities at their then market value; but with power to the said Receiver General to require from time to time, if such market value should decline, additional security equivalent to their diminution in value.

7. So long as no attachment, judgment, or order to the contrary, or notice of attachment, judgment, or order, as aforesaid, is served upon the Receiver General, the interest upon the securities representing such deposit shall be payable to the company.

8. Every company obtaining such license, as aforesaid, shall, before the transaction of any business of insurance, file in the office of the Colonial Secretary a certified copy of the charter, act of incorporation or articles of association of the company, and also a power of attorney from the company to its agent in Newfoundland, under the seal of the company, and signed by the president and secretary, or other proper officer thereof, and verified as to its authority by the agent of such company in Newfoundland or by notarial certificate.

9. Every company obtaining such license, as aforesaid, shall forthwith give due notice thereof in the *Royal Gazette* and at least one other newspaper in this colony, and shall continue the publication thereof for the space of one month, and the like notice shall be given when such company shall cease, or notify that they intend to cease to carry on business in Newfoundland.

10. Any person who shall deliver any policy of insurance on behalf of any such company, as aforesaid, except to receive the premiums due or to become due on policies actually issued previous to the first day of November, 1888, or if such license shall have been withdrawn without the renewal thereof, or without filing the copy of the charter, act of incorporation or articles of association of the company, and a power of attorney, as hereinbefore provided, shall be liable to a penalty not exceeding five hundred dollars for each contravention of this chapter, which penalty may be recovered in the Supreme Court of Newfoundland by any person suing for the same, a moiety of which penalty when recovered, shall go to the person suing for the same, and a moiety to the Receiver General for the use of this colony.

**11.** In the case of any company which previously to the passing of this chapter transacted the business of life insurance in Newfoundland, and which ceased to transact such business before the thirty-first day of December, 1888, having before that date given written notice to that effect to the Receiver General, the premiums due or to become due on policies actually issued before the last mentioned date may continue to be collected, and the claims arising thereon may be paid, and all business appertaining thereto, either at law or in equity, may be continued or commenced and prosecuted.

**12.** When any company licensed under this chapter desires to discontinue business and to have its assets in Newfoundland released, and gives written notice to that effect to the Receiver General, it may, with the consent of the policy holders, procure the transfer of its outstanding policies in Newfoundland to some company or companies licensed under this chapter in Newfoundland, or may obtain the surrender of the policies as far as practicable:—

(1.) The company shall file with the Receiver General a list of all Newfoundland policy holders whose policies have been so transferred or have been surrendered, and also a list of those which have not been transferred or surrendered;

(2.) The company shall at the same time publish in the *Royal Gazette* a notice that it will apply to the Receiver General for the release of its assets and securities on a certain day, not less than three months after the date of the notice, and calling upon its Newfoundland policy holders opposing such release to file their opposition with the Receiver General on or before the day so named;

(3.) After that day, upon the application for the release being made, if the Receiver General, with the concurrence of the Governor in Council, is satisfied that such transfer or surrender has been effected, he may direct that a portion of the securities held by the Receiver General shall be retained sufficient in amount to cover the full equitable net surrender value of such policies (including bonus additions and accrued profits) as have not been transferred, or in respect to which opposition has been filed, and may order the remaining assets or securities, aforesaid, to be released and transferred or paid over to the company;

(4.) The portion retained shall be tendered in the manner hereinafter described to the aforesaid policy holders *pro rata* according to the aforesaid values of their respective policies; and on the acceptance of the amount so tendered such policies shall be thereby deemed to be cancelled; but if such tender is refused by any policy holder, the amount so tendered may be paid over to the company and the policy shall continue in force,

and such policy holder shall not be barred from any recourse he has either in law or in equity against the company to compel the fulfilment of its contract under such policy;

(5.) Nothing herein contained shall prevent any policy holder from making special arrangements with the company whereby his policy may be continued in force; and, on proof being given of such arrangement, such policy may be omitted or removed from the above mentioned lists of policies, and this chapter shall thereafter not apply in respect of such policy.

**13.** In case of the insolvency of any company the securities representing the deposit of such company shall be applied *pro rata* towards the payment of all claims, duly authenticated against such company, upon or in respect of policies issued by the company or their agent in Newfoundland, and any such company shall be deemed insolvent upon failure to pay any undisputed claim arising, or loss insured against in Newfoundland, for the space of sixty days after being due, or if disputed, after final judgment, and in either case, after notice to the Receiver General, the distribution of the proceeds of such securities may be made by the judgment, execution, or order of distribution of the Supreme Court of Newfoundland.

**14.** For the purpose of such distribution the Court may order that the securities of the company so insolvent be transferred to a trustee, to be appointed by the Court, and the said Court may order that no further interest on such securities be thereafter paid to the company, and that such stock or any part thereof be sold in such manner and after such notice and formalities as the Court may appoint.

**15.** Whenever notice shall have been given to the Receiver General under the seventh section of this chapter, so that the amount of the securities representing the deposit of such company shall be liable to be reduced by sale of any portion thereof, the license of such company shall *ipso facto* become null and void and shall be deemed to be withdrawn; but such license may in the case last mentioned be renewed, and the company may again transact business, if, within sixty days after notice to the Receiver General of the company's failure to pay any undisputed claim, or the amount of any final judgment, as provided in the said section, undisputed claims and final judgments upon or against the company in Newfoundland are paid and satisfied, and the company's securities are restored to the amount required by this chapter.

**16.** Except in the cases provided for in the eleventh and twelfth sections of this chapter, a company shall be liable to be dealt with in the manner herein prescribed for the case of insolvency, whenever its license has expired or been withdrawn under the said chapter, and has not been renewed within thirty days after such expiry or withdrawal.

**17.** Upon the insolvency of any such company and making of a winding-up order under this chapter, the policy holders in Newfoundland shall

be entitled to claim for the full net values of their several policies at the time of the winding-up order, (including bonus additions and profits accrued), less any amount previously advanced by the company on the security of the policy; and such claims shall rank with judgments obtained and claims matured on Newfoundland policies in the distribution of the assets:

(1.) The trustee may procure to be valued under his supervision the policies before mentioned, basing such valuation on the mortality table of the Institute of Actuaries of Great Britain, and on a rate of interest at 4½ per centum per annum,—except in the case of bonus additions or other profits accrued or declared before the passing of this chapter, and then valued on the basis of a rate of interest other than that above mentioned, which in any such valuation shall continue to be valued on such other basis; and the expenses of such valuation, at a rate of three cents for each policy or bonus addition so valued, shall be retained by the Receiver General from the securities held by him;

(2.) Upon the completion by the trustee of the statement to be prepared by him of all judgments against the company upon policies in Newfoundland, and of all claims upon policies matured or outstanding, as aforesaid; the Court shall cause the securities held by the Receiver General for such company, or any part of them, to be sold or realized in such manner and after such notice and formalities as the Court appoints;

(3.) The proceeds thereof, after paying expenses incurred, shall, except in so far as they shall be applied, under this chapter, to effect a re-insurance of policies, be distributed, *pro rata*, amongst the claimants according to such statement; and if the said proceeds are not sufficient to cover in full all claims recorded in the statement, such policy holders shall not be barred from any recourse they have either in law or equity against the company issuing the policy, or against any shareholder or director thereof, other than for a share in the distribution of the proceeds above mentioned, or in any distribution of the general property and assets of the company;

(4.) Provided always, that in all cases of distribution of the proceeds of the deposit in the hands of the Receiver General, if it appears from the charter act of incorporation or articles of association of the company and from the conditions of the policy that any Newfoundland policy holder claiming a share in such distribution has been insured on the "Mutual" principle, then such policy holder shall be entitled only to claim a share in the distribution, as aforesaid, at the same rate as all other holders of policies under the same conditions are entitled to claim in the distribution of the total assets of the company,

whether they are holders of Newfoundland policies or otherwise; but this proviso shall only apply in respect to those companies chartered, incorporated, or associated together in a country, (other than Newfoundland), under the laws of which the holder of a Newfoundland policy, issued by any such company, is entitled to claim a share in the distribution in such country, at the same rate as all other holders of policies under the same conditions are entitled to claim in the distribution of the total assets of the company, and to enjoy all the rights and privileges as policy holders which are enjoyed by the policy holders which are natives of or naturalized in such country.

**18.** Whenever the company or trustee, or the holder of the policy or contract of insurance, exercises any right which it or he has to cancel the policy or contract, the holder shall be entitled to claim as a creditor for the sum which, under the terms of the policy or contract, is due to him upon such cancellation.

**19.** The trustee shall, without the filing of any claim, notice or evidence, or the taking of any action by any person, make a statement of all the persons appearing by the books and records of the officers of the company to be creditors or claimants under the two sections next preceding, and of the amounts due to each such person thereunder, and every such person shall be callocated and ranked as, and shall be entitled to the right of, a creditor or claimant for such amount without filing any claim, notice or evidence, or taking any action; but any such callocation may be contested by any person interested, and any person who is not callocated, or who is dissatisfied with the amount for which he is callocated, may file his own claim.

(1.) A copy of such statement, certified by the trustee, shall forthwith after the making of such statement, be filed in the office of the Receiver General, and notice of such filing shall forthwith be given by the trustee by notice in the *Royal Gazette* and in two other newspapers, and the trustee shall also forthwith send by mail, prepaid, a notice of such filing to each creditor named in the statement, addressed to the addresses in Newfoundland of such creditors as far as the same are known, and in the case of foreign creditors, addressed to the addresses of their representatives or agents in Newfoundland, as far as the same are known.

**20.** The holder of a policy or contract of life insurance upon which a claim accrues after the date of the order provided by section fourteen of this chapter, and before the expiration of thirty days after the filing in the office of the Receiver General of the statement referred to in the next preceding section, shall be entitled to claim as a creditor for the full net amount of such claim, less any amount previously advanced by the company on the security of the policy or contract; and the said statement and the dividend sheet shall, if necessary, be amended accordingly:

(1.) No claim which accrues after the expiration of the thirty days above mentioned shall rank upon the estate unless and until there is sufficient to pay all creditors in full.

**21.** If before the expiration of thirty days, hereinbefore mentioned, the holder of a policy or contract of life insurance on which a claim has not accrued, signifies in writing to the trustee his willingness to accept an insurance in some other company for the amount which can be secured by the dividend on his claim, to which such holder is or may become entitled, the trustee may, with the sanction of the Court, effect for such holder an insurance to the amount aforesaid in another company or companies approved of by the Receiver General, and may apply to that purpose the dividend on his claim to which such holder is or may become entitled; but such insurance shall be effected only as part of a general scheme for the assumption by some other company or companies of the whole or part of the outstanding risks and liabilities of the insolvent company.

**22.** The trustee shall report to the Receiver General once in every six months, or oftener, as the Receiver General requires, on the condition of the affairs of the company, with such further particulars as the Receiver General requires.

**23.** Publication in the *Royal Gazette* and in two other newspapers of notice of any proceeding of which under this chapter creditors should be notified, shall be sufficient notice to holders of policies or contracts of insurance, in respect of which no notice of claim has been received.

**24.** After any company shall have ceased to transact business in Newfoundland, and shall have given the notice required by this chapter to that effect, it shall be lawful for the Governor in Council to authorize the whole or any part of the securities so held in deposit for any company as aforesaid to be released and transferred to the company, upon being satisfied that it has no liabilities upon policies issued in Newfoundland, and that no suit or other proceedings are pending against the Company therein.

**25.** Such deposits as are herein provided for shall be construed to be for the security of holders of policies issued by companies or their agents in Newfoundland, and not for the general security of all holders of policies under the said company.

**26.** This chapter shall not apply to any association in connection with friendly or charitable societies in this colony, when carried on for the mutual benefit of the members, but such mutual insurance association shall publish a statement of their affairs annually in the *Royal Gazette* and at least one other newspaper in this colony.

SCHEDULE.

STATEMENT TO BE MADE BY EVERY LIFE INSURANCE COMPANY.

Assets of the company ... ... ... ... ... ... $——
Liabilities of the company ... ... ... ... ... ... ——
Amount of capital stock ... ... ... ... ... ... ——
Amount paid thereon... ... ... ... ... ... ... ——
Of what the assets of the company consist, viz: [Here insert particulars.]
Total amount of premiums received during the year ... ... ——
Number and amount of policies issued during the year ... ... ——
Amount of claims on company during the year ... ... ... ——
Expenses of management, agency, &c. ... ... ... ... ——
Total amount of premiums received during the year in Newfoundland ... ... ... ... ... ... ... ... ——
Number and amount of policies issued in Newfoundland ... ... ——
Amount at risk on total policies issued in Newfoundland ... ... ——
Number and amount of policies that have become claims in Newfoundland during the year ... ... ... ... ... ——
Amount of losses paid during the year in Newfoundland ... ... ——
Amount of losses due and unpaid ... ... ... ... ... ——
Losses adjusted and not due ... ... ... ... ... ... ——
Losses in suspense and waiting further proof ... ... ... ——
Losses, the payment of which is resisted, and for what cause ... ——
All other claims against the company ... ... ... ... ——

# CHAPTER 106.

## Of Hawkers and Pedlars, being Foreigners and not domiciled in this Colony.

SECTION
1.—Foreign pedlars not domiciled, shall take licenses.
SECTION
2.—License fee.

**1.** No pedlar, hawker, or other such person, being a foreigner and not domiciled in this colony, shall vend goods, wares or merchandize in any part of this colony or its dependencies without first having received a license from a stipendiary Magistrate, under a penalty not exceeding one hundred dollars, to be sued for and recovered in a summary manner before any stipendiary Magistrate or Justice of the Peace, and in default of payment, of imprisonment for a term not exceeding one month.

**2.** The fee for such licenses shall be fifty dollars, and the terms and conditions thereof shall be determined by the Magistrate who shall issue such license.

# CHAPTER 107.

## Of the Preservation of copies of Books printed in Newfoundland and the Registration thereof.


SECTION
1.—Meaning of term "book."
2.—Three printed copies of every book printed in the colony to be furnished by printer to Government.
3.—Officer to give receipt.
4.—Disposal of such copies.
5.—Catalogue to be kept.
6.—Memoranda registered to be published in *Gazette*.
7.—Penalty.
8.—Penalty.
9.—Recovery of penalties.
10.—Governor in Council to make rules.


**1.** In this chapter, unless the context otherwise requires, the term "book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan, separately printed or lithographed, but shall not include any publication which consists merely of a price list, sale catalogue, annual report, trade circular or trade advertisement.

**2.** Three printed or lithographed copies of the whole of every book which shall be printed or lithographed in this colony, together with all maps, prints or other engravings belonging thereto, finished and colored in the same manner as the best of the same shall be; and also of any second or subsequent edition which shall be so produced, with any additions or alterations, whether the same shall be in the letter-press, maps, prints or other engravings belonging thereto, and whether the first edition of such book shall have been produced before or after this chapter shall come into force, shall, within one calendar month after the day in which any such book shall first be delivered out of the press, and notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered free of any charge, claim, or demand whatsoever by the printer, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed or lithographed, at such place and to such officer as the Governor in Council shall, by notification in the *Royal Gazette*, from time to time direct. The publisher, or other person employing the printer, shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

**3.** Such officer shall thereupon give a receipt in writing for the copies so received.

**4.** One of such copies shall be transmitted to the British Museum, another copy shall be disposed of as the Governor in Council may direct, and the remaining copy shall, after a memorandum containing the parti-

culars hereinafter mentioned respecting the book shall have been registered as hereinafter provided, be deposited in a library, or be otherwise disposed of as the Governor in Council may from time to time determine.

**5.** There shall be kept at such office and by such officer as the Governor in Council may appoint, a book, to be called "A Catalogue of books printed in Newfoundland," wherein shall be registered a memorandum of every book which shall have been delivered pursuant to section two of this chapter; and such memorandum shall contain (so far as may be practicable) the following particulars:—

(1.) The title of the book and the contents of the title page.

(2.) The language in which the book is written.

(3.) The name of the author, translator, or editor of the book, or any part thereof.

(4.) The subject.

(5.) The place of printing and publication.

(6.) The name or firm of the printer and the name or firm of the publisher.

(7.) The date of issue from the press or of the publication.

(8.) The number of sheets, leaves, or pages.

(9.) The size.

(10.) The first, second, or other number of the edition

(11.) The number of copies of which the edition consists.

(12.) Whether the book is printed or lithographed.

(13.) The price at which the book is sold to the public; and

(14.) The name and residence of the proprietor of the copyright, or of any portion of such copyright.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the copies thereof in manner aforesaid.

**6.** The memoranda registered in the said catalogue shall be published in the *Royal Gazette*, and a copy of the same shall be sent to the Secretary of State for the colonies.

**7.** Every printer who neglects to deliver three copies of any such book as is referred to in section two of this chapter, or of any second or subsequent edition of any such book, to the officer, and in the manner hereinbefore prescribed, commits an offence punishable by a fine not exceeding fifty dollars.

**8.** Every publisher or other person employing any such printer, who neglects to supply in manner aforesaid with maps, prints, or engravings, finished and coloured as aforesaid, which may be necessary to enable such printer to comply with the provisions of this chapter, commits an offence punishable by a fine not exceeding fifty dollars.

**9.** All penalties for violations of the provisions of this chapter may be sued for and recovered summarily before a stipendiary Magistrate.

**10.** The Governor in Council shall have power to make such rules as may be necessary for carrying out the objects of this chapter, and from time to time to repeal and alter such rules, and to exclude any class of books or publications from the operation of the whole or any part of this chapter. Such rules and all repeals and alterations shall be published in the *Royal Gazette*.

# CHAPTER 108.

## Of Newspapers, Books, &c.

SECTION
1.—No newspaper to be printed or published until affidavit lodged in the office of the Colonial Secretary.
2.—Affidavit to specify the names, &c., of the printers, publishers and proprietors, and title of newspaper.
3.—Similar affidavits to be made when place of publication, printer or proprietor changed.
4.—Affidavit to be made before a stipendiary Magistrate.
5.—Persons omitting to set forth the real facts to be deemed guilty of perjury.
6.—Affidavits to be kept and filed, and certified copies to be received in evidence. Provisos.
SECTION
7.—Newspapers to set forth names of printers, publishers and proprietors. Penalty.
8.—After affidavits put in evidence, proof of identity of newspapers unnecessary.
9.—Secretary to furnish certified copies of affidavits required as evidence.
10.—Copies of newspapers to be lodged with the Secretary within six days after publication. Penalty for neglect. Papers so lodged to be produced in evidence by the Secretary.
11.—Affidavits and certified copies to be *prima facie* evidence.
12.—All books and papers to have names and residence of printers and publishers set forth. Penalty.
13.—Recovery and appropriation of penalties.

**1.** No person shall print or publish, or cause to be printed or published, any newspaper or other paper containing public news or intelligence, or serving the purpose of a newspaper, until an affidavit as hereinafter mentioned shall be delivered to the Colonial Secretary, or to some officer in the respective towns and at the respective offices which shall be appointed by the said Secretary for the purpose of receiving such affidavits, containing the several matters and things hereinafter for that purpose specified, under a penalty of two hundred dollars for every offence.

**2.** Such affidavit shall set forth the real names, additions, descriptions and places of abode of every person who is intended to be the printer and publisher of the newspaper or other paper mentioned in such affidavit and all of the proprietors of the same, and all the proprietors of the printing press and types generally used in the printing thereof, and a description of the building wherein any such paper is intended to be printed, and the title of such paper.

**3.** An affidavit of the like import shall be given in like manner as often as any of the printers, publishers or proprietors named in such affidavits shall be changed, or shall change their respective places of abode, or their printing house, place or office, and as often as the title of the paper shall be changed.

**4.** Every such affidavit shall be made by the printer or publisher or one of the proprietors of such newspaper or other paper, and shall be in writing, and signed by the person making the same and shall be taken before a stipendiary Justice of the Peace.

**5.** If any person making such affidavit shall knowingly and wilfully insert or set forth therein the name addition or place of abode of any person as proprietor, printer or publisher of any newspaper or other such paper as aforesaid to which such affidavit relates, who is not a proprietor, printer or publisher thereof, or shall knowingly and wilfully omit to mention in such affidavit the name, addition and place of abode of any of the proprietors, printer or publishers thereof, or shall knowingly and wilfully, in any other manner or respect, set forth in such affidavit any matter or thing by this chapter required to be set forth, otherwise than according to the truth, or shall knowingly or wilfully omit to set forth therein according to the truth, any matter or thing required by this chapter to be therein set forth, every such person so offending shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.

**6.** Such affidavits shall be filed and kept in such manner as the secretary of this colony shall direct; and the same, or copies thereof, certified to be true copies as hereinafter mentioned, shall respectively, in all proceedings civil and criminal, touching any newspaper or other such paper which shall be mentioned in such affidavits, or touching any publication, matter or thing contained in such newspaper or other paper, be received and admitted as conclusive evidence of the truth of all such matters set forth in affidavits, as are hereby required to be therein set forth against every person who shall have signed and sworn to such affidavits, and shall also be received and admitted in like manner as sufficient evidence of the truth of all such matters against every person who shall not have signed and sworn to the same, but who shall be therein mentioned to be a proprietor, printer or publisher of such newspaper or other paper, unless the contrary shall be satisfactorily proved; and if any such person against whom such affidavit, or any copy thereof, shall be offered in evidence, shall prove that he hath signed, sworn, and delivered to the secretary, or such officer to be

appointed by him as aforesaid, previous to the day of the date or publication of the newspaper or other such paper to which the proceeding, civil or criminal, shall relate, an affidavit that he hath ceased to be the printer, proprietor or publisher of such newspaper or other such paper, such person shall not be deemed, by reason of any former affidavit so delivered, to have been the printer, proprietor or publisher of such paper after the day upon which such last-mentioned affidavit shall have been delivered to the said secretary or the officer to be by him appointed as aforesaid: Provided, that no such affidavit shall be admitted as evidence against any person other than he who shall have made the same, unless it shall be proved that a copy thereof was furnished to such person, or left at his usual place of abode, before the publication of the matter or thing concerning which such proceeding shall have been instituted.

7. In some conspicuous part of every newspaper or other such paper there shall be printed in legible characters the name, addition and place of abode of the printer and publisher of the same, and also a description of the place where the same is printed; and in case any person shall knowingly and wilfully print or publish, or cause to be printed or published, any newspaper or other such paper not containing the particulars aforesaid, and every of them, every such person shall forfeit and pay to our Lady the Queen the sum of two hundred dollars.

8. It shall not be necessary, after any such affidavit or a certified copy thereof shall have been produced in evidence against the person who signed and made such affidavit, or is therein named according to this chapter, and after a newspaper or other such paper or book shall be produced in evidence, entitled in the same manner as the newspaper or other paper mentioned in such affidavit or copy is entitled, and wherein the name of the printer or publisher and the place of printing shall be the same as the name of the printer and publisher and the place of printing mentioned in such affidavit, for the plaintiff, informant or prosecutor to prove that the newspaper or paper, to which such trial relates, was purchased at any house, shop or office belonging to or occupied by the defendant or by his servant or workmen, or where he by himself or his servant usually carry on the printing or publishing of such paper, or where the same is usually sold.

9. The secretary or officer by whom any such affidavits shall be kept, according to the provisions of this chapter, shall, upon application made to him by any person requiring a copy certified according to this chapter of any such affidavit, in order that the same may be produced in any civil or criminal proceedings, deliver to the person so applying for the same such certified copy.

10. The printer or publisher of every newspaper or other such paper shall, upon every day upon which the same shall be published, or within six days after, deliver to the secretary or to the officers by him appointed to receive the same, one of the papers so published upon each day, signed by the printer or publisher thereof in his handwriting, with his name and

place of abode, and the same shall be carefully kept by the said secretary or such officers in such manner as the said secretary shall direct; and such printer or publisher shall be entitled to be paid half yearly the usual price for such paper, and the said secretary is hereby authorized to pay for the same out of such moneys as may be at his disposal for disbursing the contingencies of his office; and in every case in which the printer and publisher of such newspaper or other paper shall neglect to deliver one such newspaper or other paper in the manner hereinbefore directed, such printer and publisher shall, for every such neglect, respectively forfeit and pay to our lady the Queen the sum of two hundred dollars; and in case any person shall make application to the said Secretary, or to any such officer, in order that such newspaper or other paper so signed by the printer or publisher may be produced in evidence in any proceeding, civil or criminal, the said Secretary or such officer shall, at the expense of the party applying, at any time within two years from the publication thereof, either cause the same to be produced in the Court in which the same is required to be produced, or shall deliver the same to the party applying for it, taking, according to his discretion, reasonable security at the expense of such party for the returning the same to the Secretary or such officer; and in case, by reason that the same shall have been previously required by any other person to be produced in any Court, or hath been previously delivered to any other person for the like purpose, the same cannot be produced at the time required, or be delivered according to such application, the said Secretary or such officer shall cause the same to be produced, or shall deliver the same as soon as they are enabled to do so.

**11.** A copy certified under the hand of the Colonial Secretary, of any affidavit filed under the provisions of this chapter, shall be *prima facie* evidence of the making and filing of such affidavit, and of the facts and matters therein set forth. The production of the affidavit required by the first section, or a certified copy thereof, together with the printed notices required by section seven, appearing in any newspaper, and corresponding with the description and statements contained in such affidavit, shall be *prima facie* evidence of the printing or publishing of such newspaper by the person or persons stated in such affidavit and notice to be the printer or publisher thereof.

**12.** Any person who shall print any book or paper which shall be intended to be published or dispersed, whether the same shall be sold or given away, shall print upon the front of every such paper, if the same shall be printed on one side only, and upon the first and last leaves of every book or paper which shall consist of more than one leaf, in legible characters, his name, and the name of the city town or place, and also the name (if any) of the square, street, lane, court or place in which his dwelling house or usual place of abode shall be; and every person who shall omit so to print his name and place of abode on every such paper or book printed by him, and also every person who shall publish or disperse, or assist in publishing or dispersing, either gratis or for money, any printed paper or book, on which the name and place of abode of the person

printing the same shall not be printed as aforesaid, shall, for the publication or dispersion by him of every copy of such paper or book so published or dispersed, forfeit and pay to our lady the Queen the sum of one hundred dollars. Nothing herein contained shall extend to any papers printed by the authority and for the use of the Government or either branch of the Legislature of this island, nor to any paper printed and published by any clergyman, and containing religious instruction only.

**13**. Proceedings for the recovery of all fines, penalties and forfeitures by this chapter imposed shall be by action, bill, plaint or information in the Supreme Court, in the name of Her Majesty's Attorney or Solicitor General and the money arising from such fines, penalties and forfeitures, when recovered shall be paid to the Receiver General for the use of the colony.

# TITLE XII.

## OF PATENTS, COPYRIGHTS AND TRADE MARKS.

## CHAPTER 109.

### Of Patents.

SECTION
1.—Governor in Council may grant letters patent for new and useful inventions.
2.—The improver of a patented invention may have a patent for his improvement.
3.—Copy of letters patent and of petition may be received from the Secretary's office.
4.—Oath or affirmation to be taken before patent is granted.
5.—Description of invention and model with drawings thereof to be filed with petition.
6.—Applicant to have rights for six months after petition, &c.
7.—Patentee may assign his interest in patent.
8.—Forfeiture for infringing patent rights.
9.—In actions for infringment, general issue may be pleaded.
10.—No applicant to be deprived of his right to a patent in this colony by reason of obtaining patent elsewhere. No patent to be in force in this colony which has expired elsewhere.
SECTION
11.—Letters patent may issue to assignee of patent obtained elsewhere.
12.—Patents not in operation within twelve months to be forfeited.
13.—Notice of application for patents to be published in *Gazette*, &c.
14.—Remedy where patentee takes a larger interest than his invention entitles him to.
15.—Disclaimer of surplus where specification is too broad.
16.—Remedy where patent becomes invalid by reason of a defect in description, &c.
17.—Original patentee's right to patent any improvement he may make on his invention.
18.—No patent granted elsewhere to be of effect in this colony, until specifications, &c., be filed in Secretary's office.
19.—Affirmations and oaths.
20.—Fees.

**1**. Whenever any person shall apply to the Governor, alleging that he hath invented and discovered any new and useful art, machine, manu-

facture or composition of matter not heretofore known or used, and shall, by petition to the Governor, signify his desire to obtain an exclusive property in such new invention and discovery, and shall pray that a patent be granted for the same, the Governor in Council may direct letters patent under the great seal of the colony to be issued, which letters patent shall recite the allegations and suggestions of the said petition, and shall therein give a short description of the said invention and discovery; and thereupon shall grant to such person, his executors, administrators or assigns, for a term not exceeding fourteen years, the full and exclusive right and liberty of making, constructing and using, and vending to others to be used the said new invention or discovery; which letters patent shall be good and available to the grantee therein named, by force of this chapter, and shall be recorded in the office of the Colonial Secretary in a book to be kept for that purpose, and shall be delivered to the patentee; and the Governor in Council may insert in any such letters patent a provision extending the operation thereof for a further term of seven years. Before the great seal of this island shall be affixed to any such letters patent, or the same shall be issued or signed as aforesaid, such letters patent shall be delivered to Her Majesty's Attorney General, who shall examine the same, and shall, if he finds the same conformable to this chapter, certify accordingly, and return the same within fifteen days into the office of the Colonial Secretary, to be issued and signed.

**2.** Where any such letters patent shall be obtained by any person, and thereafter any other person shall discover or make any improvement in the principle or process of any such art, machine, or composition of matter for which such patent hath been granted, and shall make application for and obtain letters patent under this chapter for the exclusive right of such improvement, the person who shall obtain and procure letters patent for any such improvement shall not make, use or vend the original invention or discovery, nor shall the person who shall have procured letters patent for the original invention or discovery, make, use or vend any such improvement: Provided, that simply changing the form or the proportions of any machine or composition of matter, in any degree, shall not be deemed a discovery or improvement within the meaning of this chapter.

**3.** Any person may obtain from the office of the Colonial Secretary a copy of any such letters patent or of the petition whereon the same were issued, or of any paper connected therewith, or any drawing relating to the same, on payment for such copy of such fees as are now payable at the office of the Colonial Secretary for copies of other documents.

**4.** Before any person shall receive any letters patent under this chapter such person shall make oath in writing that he doth verily believe that he is the inventor or discoverer of the art, machine, composition of matter, or improvement for which he solicits letters patent, and that such invention or discovery hath not, to the best of his know-

ledge or belief, been known or used in this colony or in any other country, which oath shall be delivered with the petition for such letters patent.

5. Together with such petition and oath, before any person shall obtain any letters patent, as aforesaid, such person shall also deliver into the office of the Colonial Secretary a written description of his invention, and of the manner of using or process of compounding the same, in such full, clear, and exact terms as to distinguish the same from all other things before known, and to enable any person skilled in the art or science of which it is a branch, or with which it is most nearly connected, to make, compound and use the same; and in case of any machine, shall deliver a model thereof into the office of the Colonial Secretary, and shall explain the principle and the several modes in which such person hath contemplated the application of that principle or character by which it may be distinguished from other inventions; and shall accompany the whole with drawings and written references, where the nature of the case admits of drawings, or with specimens of the ingredients, and of the composition of matter, sufficient in quantity for the purpose of experiment, where the invention is of a composition of matter, which description, signed by such person and attested by two witnesses, shall be filed in the office of the Colonial Secretary, and copies thereof, certified under his hand, shall be evidence in all Courts where any matter or thing touching or concerning the said letters patent shall come into question: Provided that where, from the complicated nature of any machinery, the cost of a model thereof may be so great as to prevent any ingenious but poor person from obtaining patents for his useful inventions, the Governor in Council may dispense with the delivery of such model into the office of the Colonial Secretary previous to the granting of any such patent; and the requirements of this chapter being in all other respects complied with, such person shall be entitled to such patent as if such model had been so lodged.

6. After the expiration of one week from the date of the delivery into the office of the Colonial Secretary of the petition, oath and description of invention, as prescribed in section 1, 4 and 5 of this chapter, and until the expiration of six months, from said date of delivery, the applicant for letters patent for any invention shall have the like privileges and rights as if letters patent under the provisions of the said chapter had been sealed and delivered on the date of said delivery.

7. Any patentee, his executors or administrators, may assign all his right, title and interest in the said invention and discovery in the letters patent to him granted, to any person, and the assignee thereof having recorded the said assignment in the office of the Colonial Secretary, shall thereafter stand in the place and stead of the original patentee, as well as to all right privilege and advantage, as also in respect of all liability and responsibility as to the said letters patent, and the invention and discovery thereby secured; and in like manner shall the assignees of any such assignee stand in the place and stead of the original patentee or inventor.

8. Whenever in any case any letters patent shall be or shall have been granted to any person under and by virtue of this chapter, and any person, without the consent of the patentee, his executors, administrators or assigns, first had and obtained in writing, shall make, devise, use, or sell the thing, invention or discovery whereof the exclusive right is secured to the said patentee by such letters patent, such person so offending shall forfeit and pay to the said patentee, his executors, administrators, or assigns, a sum equal to three times the actual damage sustained by such patentee, his executors, administrators or assigns, from or by reason of such offence, which sum may be recovered, together with costs, by action founded on this chapter, in the Supreme Court.

9. The defendant in such action may plead the general issue, and give this chapter and any special matter in evidence, tending to prove that the specification filed by the plaintiff does not contain the whole truth relative to the invention or discovery therein alleged to have been made by the said plaintiff, or that it contains more than is necessary to produce the described effect, (which concealment or addition shall fully appear to have been made for the purpose of deceiving the public,) or that the thing, invention or discovery thus secured by letters patent as aforesaid was not originally discovered by the patentee, but had been in use or had been described in some public work anterior to the supposed invention or discovery of the said patentee or that he had surreptitiously obtained letters patent as aforesaid for the invention or discovery of some other person ; in either of which cases, upon proof thereof, a verdict shall be returned and a judgment shall be entered for the said defendant with costs, and the said letters patent shall thereupon be and shall by the said Court be adjudged void.

10. No applicant shall be deprived of his right to a patent in this colony for his invention by reason of his having previously taken out letters patent therefor in any other country ; Provided that such invention shall not have been introduced into public and common use in this colony prior to the application for a patent therein, and the patent granted in this colony shall not continue in force after the expiration of the patent granted elsewhere ; and where more than one such patent or like privilege is obtained abroad, then immediately upon the expiration or determination of the term which shall first expire or be determined of such several patents or like privileges, the patent granted in this colony shall cease to be in force ; and no letters patent for or in respect of any invention for which any such patent or like privilege as aforesaid shall have been obtained elsewhere, and which shall be granted in this colony, after the expiration of the term for which such patent or privilege was granted or was in force, shall be of any validity.

11. Letters patent may be issued by the Governor in Council to the assignee of any person who may have taken out letters patent for his invention or discovery in any other country, but not for any invention or discovery made abroad for which no letters patent have been there

obtained: Provided that the invention or discovery so assigned shall not have been introduced into public and common use in this colony prior to the application for a patent; and that the assignee of such foreign patent shall file, with his application, the assignment duly proved, under which he claims a patent in this colony, and an affidavit setting forth the date of the patent abroad, that the article thereby patented has not been in public and common use in this colony, and that he is assignee for a good consideration.

**12.** Any letters patent which may be taken out under or by virtue of this chapter, and which shall not have been brought into operation within two years next ensuing from and after the date thereof, shall, at the expiration of the said period of two years, be void.

**13.** No letters patent shall be granted under or by virtue of this chapter until notice shall have been published in the *Royal Gazette*, and one other of the newspapers of this colony, for at least four weeks, of the intention of the applicant to apply for such letters patent; and such notice shall contain, in general terms, the description of invention for which such letters patent shall be desired.

**14.** If by mistake, accident or inadvertence, and without any wilful default or intent to defraud or mislead the public, a patentee shall in his specification have claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, but of which he was not the original or first inventor, and shall have no just or legal right to claim the same, his patent in such case shall be valid for so much of the invention or discovery as shall be actually his own, provided it is a material and substantial part of the thing patented, and be plainly distinguishable from other parts patented without right; and every such patentee and his legal representatives, whether holding the whole or a particular interest in the patent, may maintain suits at law or in equity for any infringement of such part of the same as is actually the invention or discovery of the patentee, although his specification may embrace more than he has a legal right to claim; but if in such case the plaintiff shall obtain a verdict or judgment, he shall not be entitled to costs, unless before the commencement of the suit he shall have filed in the office of the Colonial Secretary a disclaimer, attested by a witness, of that part of the thing patented which was claimed without right; and no person bringing a suit shall be entitled to the benefits of this section if he shall have unreasonably neglected or delayed to record his disclaimer.

**15.** If through inadvertence, accident or mistake, a patentee shall have made his specification too broad, by claiming more than that of which he was the original or first inventor (some material and substantial part of the thing patented being justly and truly his own), such patentee or his legal representatives may disclaim the excess; the disclaimer shall be in writing, and shall state the extent of interest in the patent held by the party making the same; it shall be attested by a witness, and be re-

corded in the office of the Colonial Secretary; thereafter such disclaimer shall be considered as part of the original specification, to the extent of the interest possessed by the party making the same, or by those claiming under him; but no such disclaimer shall affect any action or suit pending at the time of its being recorded, except so far as may relate to the question of unreasonable neglect or delay in recording the same.

**16**. If any patent shall become inoperative or invalid by reason of a defective or insufficient description or specification, or by reason of the patentee claiming in his specification, as his own invention, more than he had a right to claim, and the error has arisen from inadvertence, accident or mistake, and without any fraudulent or deceptive intention, the Governor in Council upon the surrender of such patent, and upon petition therefor, may cause a new patent to be issued to the patentee for the residue of the term mentioned in the first patent, in accordance with the patentee's amended description and specification. In case of his death or the assignment by him of the original patent or any fractional interest therein, the right shall vest in his legal representatives, to the extent of their respective interests in such patent; and the patent so re-issued, together with the amended description and specification, shall have the same effect and operation in law as though the same had been originally filed in such amended form before the issuing of the original patent.

**17**. If an original patentee shall be desirous of adding a description and specification of an improvement upon his original invention or discovery, made or discovered by him subsequent to the date of his patent, he may, upon the like proceedings being had in all respects as in the case of an original application, have the same annexed to his original description and specification; and the Colonial Secretary shall certify upon such annexed description and specification the time of its being annexed and recorded; and thereafter it shall have the same effect in law as if it had been embraced in the original description and specification, and had been recorded therewith.

**18**. No patent for any invention or discovery granted in England or elsewhere out of the colony, and extending to the colonies, shall be of force and effect in this colony until copies of the original specification and drawings filed, or duplicates of the models lodged in England or elsewhere out of the colony, upon which such patent was there obtained, shall be filed or lodged in the office of the Colonial Secretary, who shall grant a certificate of the lodging or filing the same.

**19**. All oaths required by this chapter may be taken in this colony before a Judge of the Supreme Court or a commissioner for taking affidavit in the same: and outside this colony before a commissioner of the Supreme Court, a Judge of a Court of Record, the mayor or chief magistrate of any city or town, a justice or British ambassador, consul, vice-consul or consular agent: and the attestation with the date thereof shall, when made before a Judge of a Court of Record or a mayor of any city or

town, be certified under the seal of such court, city or town, and when made before a justice or British ambassador, consul, vice-consul or consular agent, the official character of such justice, British ambassador, consul, vice-consul or consular agent shall be certified under the hand and seal of a notary public.

**20.** Any person who may take out letters patent under this chapter shall pay for the same such fees as are charged on documents issued under the great seal of this colony, and shall in addition deposit with the Colonial Secretary the sum of twenty-five dollars, to be by him paid to the Receiver General for the use of the colony.

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# CHAPTER 110.

## Of Copyright.


SECTION
1.—Short title.
2.—Expression "legal representatives."
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SECTION
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29.—Forfeiture for reproducing works of art after registration.
30.—Forfeiture for selling or copying prints, maps, etc., after registration.
31.—Penalty. Penalties, how recoverable.
32.—No action shall be taken after two years.


**1.** This chapter may be cited as the "Copyright Act, 1890."

**2.** The expression "legal representatives" shall include executors, administrators and assigns or other legal representatives.

**3.** The Colonial Secretary shall cause to be kept in his office books, to be called the "Registers of Copyrights," in which proprietors of literary, scientific and artistic works or compositions may have the same registered, in accordance with the provisions of this chapter.

4. Any person domiciled in Newfoundland, who is the author of any book, map, chart, or musical composition, or of any original painting, drawing, statue, sculpture or photograph, or invents, designs, etches or engraves, or causes to be engraved, etched or made from his own design any print or engraving, and the legal representatives of such person, shall have the sole and exclusive right and liberty of printing, re-printing, publishing, reproducing and vending such literary, scientific or artistic work or composition, in whole or in part, and of allowing translations to be printed or re-printed and sold of such literary work, from one language into other languages for the term of twenty-eight years from the time of recording the copyright thereof, in the manner hereinbefore directed.

5. (1.) The condition for obtaining such copyright shall be that the said literary, scientific or artistic works shall be printed and published, or in the case of works of art, that they shall be produced in this colony.

(2.) No immoral, licentious, irreligious, treasonable or seditious literary, scientific or artistic work, shall be the legitimate subject of such registration or copyright.

6. Any literary work intended to be published in pamphlet or book form, but which is first published in separate articles in a newspaper or periodical, may be registered under this chapter while it is so preliminarily published, if the title of the manuscript and a short analysis of the work are deposited at the Colonial Secretary's office, and if every separate article so published is preceded by the words "Registered in accordance with the Copyright Act;" but the work when published in book or pamphlet form shall be subject also to the other requirements of this chapter.

7. If a book is published anonymously, it shall be sufficient to enter it in the name of the first publisher thereof, either on behalf of the unnamed author or on behalf of such first publisher, as the case may be.

8. No person shall be entitled to the benefit of this chapter, unless he has deposited at the Colonial Secretary's office two copies of such book, map, chart, musical composition, photograph, print, cut or engraving; and in case of paintings, drawings, statuary and sculpture, unless he has furnished a written description of such work of art, and the Colonial Secretary shall cause the copyright of the same to be recorded forthwith in a book to be kept for that purpose in the manner adopted by him, or prescribed by the rules and forms made, from time to time, as herein provided.

9. The Colonial Secretary shall cause one of such two copies of such book, map, chart, musical composition, photograph, print, cut or engraving, to be deposited in the Legislative Library of this colony.

10. It shall not be requisite to deliver any printed copy of the second or any subsequent edition of any book, unless the same contains very important alterations or additions.

**11.** No person shall be entitled to the benefit of this chapter unless he gives information of the copyright being secured, by causing to be inserted in the several copies of every edition published during the term secured, on the title page or on the page immediately following, if it is a book, or if it is a map, chart, musical composition, print, cut, engraving or photograph, by causing to be impressed on the face thereof, or if it is a volume of maps, charts, music, engravings or photographs, upon the title page or frontispiece thereof, the following words, that is to say: "Entered according to the Act of the Legislature of Newfoundland, in the year , by , at the Colonial Secretary's office;" but as regards paintings, drawings, statuary, and sculptures, the signature of the artist shall be deemed a sufficient notice of such proprietorship.

**12.** The author of any literary, scientific or artistic work, or his legal representatives, may, pending the publication, obtain an interim copyright therefor, by depositing in the Colonial Secretary's office a copy of the title or designation of such work intended for publication, which title or designation shall be registered in an interim copyright register at the said department, to secure to such author aforesaid, or his legal representative, the exclusive rights recognized by this chapter, previous to publication.

**13.** The application for the registration of an interim copyright, a temporary copyright and of a copyright, may be made in the name of the author or of his legal representatives, by any person purporting to be the agent of such author or legal representatives; and any damage caused by a fraudulent or an erroneous assumption of such authority shall be recoverable in any Court of competent jurisdiction.

**14.** (1.) The right of an author of a literary, scientific or artistic work to obtain a copyright, and the copyright when obtained, shall be assignable in law, either as to the whole interest or any part thereof by any instrument in writing, made in duplicate, which shall be registered at the Colonial Secretary's office on production of both duplicates, and the payment of the fee hereinafter mentioned.

(2.) One of the duplicates shall be retained at the Colonial Secretary's office and the other shall be returned, with a certificate of registration, to the party depositing it.

**15.** Whenever the author of a literary, scientific or artistic work or composition which may be the subject of a copyright has executed the same for another person, or has sold the same to another person for due consideration, such author shall not be entitled to obtain or retain the proprietorship of such copyright, which is by the said transaction virtually transferred to the purchaser, and such purchaser may avail himself of such privilege unless a reserve of the privileges is specially made by the author or artist in a deed duly executed.

**16.** If at the expiration of the said term of twenty-eight years the author or any of the authors (when the work has been originally composed

or made by more than one person) is still living, or if such author is dead and has left a widow or a child or children living, the same sole and exclusive right and liberty shall be continued to such author or to such authors still living, or if dead, then to such widow and child or children, as the case may be, for a further term of fourteen years; but in such case within one year after the expiration of such term of twenty-eight years, the title of the work secured shall be a second time registered, and all other regulations herein required to be observed in regard to original copyrights shall be complied with in respect to such renewed copyright.

**17.** In all cases of renewal of copyright, under this chapter, the author or proprietor shall, within two months from the date of renewal, cause notice of such registration thereof to be published once in the *Royal Gazette*.

**18.** (1.) In case of any person making an application to register as his own the copyright of a literary, scientific or artistic work already registered in the name of another person, or in case of simultaneous conflicting applications, or of an application made by any person other than the person entered as proprietor of a registered copyright to cancel the said copyright, the person so applying shall be notified by the Colonial Secretary that the question is one for the decision of a Court of competent jurisdiction, and no further proceedings shall be had or taken by the Colonial Secretary concerning the application until a judgment is produced maintaining, cancelling or otherwise deciding the matter.

(2.) Such registration, cancellation, or adjustment of the said rights shall then be made by the Colonial Secretary in accordance with such decision.

**19.** Every person who, without the consent of the author or lawful proprietor thereof first obtained, prints or publishes, or causes to be printed or published, any manuscript not previously printed in Newfoundland or elsewhere, shall be liable to the author or proprietor for all damages occasioned by such publication, and the same shall be recoverable in any Court of competent jurisdiction.

**20.** If a work copyrighted in Newfoundland becomes out of print, a complaint may be lodged by any person with the Colonial Secretary, who on the fact being ascertained to his satisfaction, shall notify the owner of the copyright of the complaint and of the fact; and if within a reasonable time no remedy is applied by such owner, the Colonial Secretary may grant a license to any person to publish a new edition, specifying the number of copies and the royalty to be paid on each to the owner of the copyright.

**21.** The following fees shall be paid to the Colonial Secretary before an application for any of the purposes herein mentioned is received, that is to say:—

| | |
|---|---|
| On registering a copyright ... ... ... ... ... ... | $1.00 |
| On registering an interim copyright ... ... ... ... ... | 50 |
| On registering a temporary copyright ... ... ... ... | 50 |
| On registering an assignment ... ... ... ... ... | 1.00 |
| For certified copy of registration ... ... ... ... ... | 50 |
| On registering any decision of a Court of Justice, for every folio ... | 50 |

For office copies of documents, not above mentioned, the following charges shall be made:—

| | |
|---|---|
| For every single or first folio, certified copy ... ... ... | $ 50 |
| For every subsequent hundred words (fractions under and not exceeding fifty not being counted, and over fifty being counted for one hundred) ... ... ... ... ... ... ... | 25 |

(2.) The said fees shall be in full for all services performed under this chapter by the Colonial Secretary, or by any person employed by him under this chapter.

(3.) No person shall be exempt from the payment of any fee or charge payable in respect of any services performed under this chapter for such person, and no fee paid shall be returned to the person who paid it.

**22.** Nothing herein contained shall prejudice the right of any person to represent any scene or object, notwithstanding there may be copyright in some other representations of such scene or object.

**23.** Clerical errors which occur in the framing or copying of any instrument drawn by any officer or employee in or of the department, shall not be construed as invalidating such instrument; but when discovered they may be corrected under the authority of the Colonial Secretary.

**24.** All copies or extracts, certified from the Colonial Secretary's office, shall be received in evidence without further proof and without production of the originals.

**25.** The Colonial Secretary may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms as appear to him necessary and expedient for the purposes of this chapter; and such regulations and forms circulated in print for the use of the public shall be deemed to be correct for the purposes of this chapter; and all documents executed and accepted by the Colonial Secretary shall be held valid, so far as relates to all official proceedings under this chapter.

**26.** Every person who wilfully makes, or causes to be made, any false entry in any of the registry books of the Colonial Secretary hereinbefore mentioned, or who wilfully produces or causes to be tendered in evidence, any paper which falsely purports to be a copy of an entry in any of the

said books, shall be guilty of a misdemeanor, and shall be punished accordingly.

**27.** Every person who fraudulently assumes authority to act as agent of the author, or of his legal representative, for the registration of an interim copyright, a temporary copyright, or a copyright, shall be guilty of a misdemeanor, and shall be punished accordingly.

**28.** Every person who, after the copyright of any book is secured according to this chapter, and during the term or terms of its duration, prints, publishes, or reprints or republishes, or causes to be so printed or published, any copy or any translation of such book, without the consent of the person lawfully entitled to the copyright thereof, first had and obtained by assignment, or who, knowing the same to be so printed, publishes, sells, or exposes for sale, or causes to be published, sold, or exposed for sale, any copy of such book without such consent, shall forfeit every copy of such book to the person then lawfully entitled to the copyright thereof; and shall forfeit and pay for every such copy which is found in his possession, either being printed or reprinted, published or exposed for sale contrary to the provisions of this chapter, such sum not exceeding one dollar, and not less than ten cents, as the Court may determine, which forfeiture shall be recoverable in any Court of competent jurisdiction, and a moiety of such sum shall go to the Receiver General for the use of the Colony, and the other moiety shall belong to the lawful owner of such copyright.

**29.** Every person who, after the registering of any painting, drawing, statue, or other work of art, and within the term or terms limited by this chapter, reproduces in any manner, or cause to be reproduced, made or sold, in whole or in part, any copy of any such work of art, without the consent of the proprietor, shall forfeit the plate or plates on which reproduction has been made, and every sheet thereof so reproduced, to the proprietor of the copyright thereof; and shall also forfeit for every sheet of such reproduction, published or exposed for sale contrary to this chapter, such sum not exceeding one dollar nor less than ten cents, as the Court determines, which forfeiture shall be recoverable in any Court of competent jurisdiction, and a moiety of such sum shall go to the Receiver General for the use of the colony, and the other moiety shall belong to the lawful owner of such copyright.

**30.** Every person who, after the registering of any print, cut or engraving, map, chart, musical composition or photograph, according to the provisions of this chapter, and within the term or terms limited by this chapter, engraves, etches or works, sells or copies, or causes to be engraved etched or copied, made or sold, either as a whole or by varying, adding to or diminishing the main design with intent to evade the law, or who prints or reprints, or causes to be so printed or reprinted any such map, chart, musical composition, print, cut, engraving, or any part thereof, without the consent of the proprietor of the copyright thereof first obtained as afore-

said, or who, knowing the same to be so reprinted or printed without such consent, publishes, sells, or exposes for sale, or in any manner disposes of any such map, chart, musical composition, engraving, cut, photograph, or print, without such consent as aforesaid, shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, photograph or print has been copied, and also every sheet thereof so copied, or printed as aforesaid, to the proprietor of the copyright thereof; and shall also forfeit for every sheet of such map, chart, musical composition, print, cut or engraving found in his possession, printed or published, or exposed for sale contrary to this chapter, such sum, not exceeding one dollar nor less than ten cents, as the Court determines, which forfeiture shall be recoverable in any Court of competent jurisdiction, and a moiety of such sum shall go to the Receiver General for the use of the colony, and the other moiety shall belong to the lawful owner of such copyright.

**31.** (1.) Every person who has not lawfully acquired the copyright of a literary, scientific or artistic work, and who inserts in any copy thereof, printed, produced, reproduced or imported, or who impresses on any such copy that the same has been entered according to this chapter, or words purporting to assert the existence of a Newfoundland copyright in relation thereto, shall incur a penalty not exceeding one hundred dollars.

(2) Every penalty incurred under this section shall be recoverable in any Court of competent jurisdiction, and a moiety thereof shall go to the Receiver General for the use of the colony, and the other moiety shall belong to the person who sues for the same.

**32.** No action or prosecution for the recovery of any penalty under this chapter, shall be commenced more than two years after the cause of action arises.

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# CHAPTER 111.

## Of the Importation of Books and the Protection of the British Author.


SECTION
1.—Reprints of books protected by copyright laws to pay an *ad valorem* duty of twenty dollars per cent. Application of duties.
2.—Penalties, recovery and application thereof.
3.—Meaning of terms used in this chapter.
4.—Reprints to be stamped on entry.


**1.** Upon the importation from foreign countries of any reprint of any book or review, bound or in covers, first composed, written or published in the United Kingdom of Great Britain and Ireland, and protected, at the

time of importation, by the acts of the imperial parliament to enforce the laws of copyright, there shall be paid an *ad valorem* duty upon the *bona fide* price of such reprints of twenty per cent; but the reprint of any book or review not duly registered according to the provisions of the statutes of the imperial parliament relating to copyright, shall not be liable to such *ad valorem* duty. Such duties shall not be paid on newspapers or other regular periodicals containing extracts only from such books or reviews; and after collection of the proper duties the same shall be paid to the author of the said book or review, or to the proprietor of the said copyright, as Her Majesty shall be pleased to direct.

**2.** No person shall import or bring, or cause to be imported or brought into this colony, for use, sale or hire, any reprint referred to in the foregoing section, and therein and thereby made liable to duty, contrary to this chapter, or knowingly sell, publish, or expose to sale, or let to hire, or have in his possession, for use, sale or hire, any such reprint; and every such reprint so imported, or bought, sold, published, or exposed for sale, shall be forfeited and sold, one half the proceeds thereof to be applied to the use of the officers of the customs seizing the same, and the other half to the author or proprietor of the copyright; and every person so offending, being convicted thereof before any two Justices in the district where the seizure is made, shall, for every such offence, forfeit the sum of twenty-five dollars and double the value of every copy of such book or reprint which he shall so import or cause to be imported into this colony, or shall knowingly sell, publish or expose to sale, or let to hire, or shall have in his possession for sale or hire, contrary to this chapter; eight dollars of such penalty, after deducting expenses of prosecution, shall be paid to such officers of customs, and the remainder of the penalty to the proprietor of the copyright; and the said double value of such book or reprint, and the said respective proportions of the proceeds of the sale of such book or reprint, and of such penalty, shall be paid as hereinbefore provided.

**3.** In the construction of this chapter, the word "book" or "reprint" shall mean and include every volume, part or division of a volume, pamphlet, sheet of letter press, sheet of music, map, chart or plan, separately published; and the word "copyright" shall mean the sole and exclusive liberty of printing or otherwise multiplying copies of such volume, part or division of a volume, pamphlet, sheet of letter press, sheet of music, chart or plan, separately published.

**4.** At the time of the entry of any such reprint of any book or review, the officers passing such reprint shall stamp the same; and the Receiver General shall furnish said officers with the form of stamp necessary for such service.

# CHAPTER 112.

## Of Trade Marks, and the Registration thereof.


SECTION

1.—Offences in relation to trade marks. Penalties, procedure, &c.
2.—Meaning of expressions, and application of provisions of chapter.
3.—What to be deemed forging a trade mark.
4.—What to be deemed applying a trade mark.
5.—What shall be considered a defence.
6.—Relating to watches.
7.—Statements in indictments.
8.—Evidence.
9.—Accessories.
10.—Search warrants, forfeiture, destruction of articles forfeited.
11.—Application of Imperial Act 22 & 23 Vic., Cap. 17.
12.—Costs.
13.—Commencement of prosecutions.
14.—Prohibiting importation of goods liable to forfeiture.
15.—Vendor of goods deemed to warrant trade mark genuine.

SECTION

16.—Where trade description applied to goods of particular class.
17.—This chapter not to exempt from other suit or proceeding.
18.—False representation as to royal warrant, or service. Penalty.
19.—Register of trade marks.
20, 21, 22.—Essentials of trade marks for registration.
23.—Rules and regulations to be made by Colonial Secretary.
24.—Essentials of application for registration.
25.—Fees on registration.
26.—Colonial Secretary may object to register—in what cases.
27.—On compliance with requirements of chapter, registration to take place.
28.—Trade mark registered to endure without limitation.
29.—Trade marks assignable.
30.—Fraudulent use of trade mark. Penalty.
31.—Action for infringement.


**1.** (1.) Every person who—

(*a.*) Forges any trade mark; or

(*b.*) Falsely applies to goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive; or

(*c.*) Makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or

(*d.*) Applies any false trade description to goods; or

(*e.*) Disposes of, or has in his possession, any die, block, machine, or other instrument for the purpose of forging a trade mark; or

(*f.*) Causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this chapter, and unless he proves that he acted without intent to defraud, be guilty of an offence against this chapter.

(2.) Every person who sells, or exposes for sale, or has in his possession for sale, or for any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark, or mark so nearly resembling a trade mark as to be calculated to deceive, is falsely applied, as the case may be, shall be guilty of an offence against this chapter, unless he proves—

(*a.*) That having taken all reasonable precautions against committing an offence against this chapter, he had at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(*b.*) That on demand made by, or on behalf of the prosecutor, he gave all information in his power with respect to the persons from whom he obtained such goods or things; or

(*c.*) That otherwise he had acted innocently.

(3.) Every person guilty of an offence against this chapter shall be liable—

(1.) On conviction on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

(2.) On summary conviction, to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding $100; and in the case of a second or subsequent conviction, to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding $200; and

(3.) In any case, to forfeit to Her Majesty every chattel, article, instrument, or thing, by means of or in relation to which the offence has been committed.

(4.) The Court before which any person is convicted under this section may order any forfeited articles to be destroyed, or otherwise disposed of, as the Court thinks fit.

(5.) If any person feels aggrieved by any conviction made by a Court of summary jurisdiction, he may appeal therefrom to the Supreme Court.

(6.) Any offence for which a person is, under this chapter, liable to punishment, on summary conviction, may be prosecuted, and any articles liable to be forfeited under this chapter by a Court of summary jurisdiction, may be forfeited: Provided that a person charged with an offence under this section, before a Court of summary jurisdiction, shall, on appearing before the Court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires, to be tried accordingly.

**2.** (1.) For the purpose of this chapter—

The expression "trade mark" means a trade mark registered in the register of trade marks kept under the provisions of this chapter, and includes any trade mark which, either with or without

registration, is protected by law in any British possession or foreign state, to which the provisions of the one hundred and third section of the Imperial "Patents, Designs and Trade Marks' Act, 1883," are under order in Council for the time being applicable.

The expression "trade description" means any description, statement or other indication, direct or indirect:

(*a.*) As to the number, quantity, measure, guage or weight of any goods; or

(*b.*) As to the place or country in which any goods were made or produced; or

(*c.*) As to the mode of manufacturing or producing any goods; or

(*d.*) As to the material of which any goods are composed; or

(*e.*) As to any goods being the subject of an existing patent privilege or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this chapter.

The expression "false trade description," means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this chapter.

The expression "goods," means anything which is the subject of trade, manufacture, or merchandise;

The expressions "person," "manufacturer," "dealer," or "trader," and "proprietor," include any body of persons corporate or incorporate;

The expression "name," includes any abbreviation of a name.

(2.) The provisions of this chapter, respecting the application of a false trade description to goods, shall extend to the application to goods of any such figures, words, or marks, or arrangement, or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3.) The provisions of this chapter, respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means, as applied to any goods any name or initials of a person which—

(*a.*) Are not a trade mark, or part of a trade mark; and

(*b.*) Are identical with, or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials; and

(*c.*) Are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.

**3.** A person shall be deemed to forge a trade mark who either—

(*a*) Without the assent of the proprietor of the trade mark, makes that trade mark, or a mark so nearly resembling that trade mark, as to be calculated to deceive; or

(*b.*) Falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or marks so made or falsified, is in this chapter referred to as a forged trade mark. Provided that in any prosecution for forging a trade mark, the burden of proving the assent of the proprietor shall lie on the defendant.

**4.** (1.) A person shall be deemed to apply a trade mark, or mark or trade description to goods, who—

(*a.*) Applies it to the goods themselves; or

(*b*) Applies it to any covering, label, reel, or other thing in or with which the goods are sold, or exposed, or had in possession for any purpose of sale, trade or manufacture; or

(*c.*) Places, encloses, or annexes any goods which are sold, or exposed, or had in possession for any purpose of sale, trade or manufacture in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or

(*d.*) Uses a trade mark, or mark, or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark description.

(2.) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

(3.) A person shall be deemed to falsely apply to goods a trade mark or marks, who, without the assent of the proprietor of a trade mark, applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive; but in any prosecution for falsely applying a trade mark or mark to goods, the burden of proving the assent of the proprietor shall lie on the defendant.

**5.** Where a defendant is charged with making any die, block, machine, or other instrument, for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark, or any mark so nearly resembling a trade mark, as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

(*a*) That in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is a subject of the charge, he was so employed by some person resident in Newfoundland, and was not interested in the goods by way of profit or commission dependant on the sale of such goods; and

(*b*) That he took reasonable precautions against committing the offence charged; and

(*c*.) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description; and

(*d*.) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

**6.** Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *prima facie* be deemed to be a description of that country within the

meaning of this chapter, and the provisions of this chapter with respect to goods, to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for, sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

**7.** In any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

**8.** In any prosecution for an offence against this chapter—

(1.) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.

(2.) In the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced.

**9.** Any person who, being within Newfoundland, procures, counsels, aids, abets, or is accessory to the commission, without Newfoundland, of any act, which, if committed in Newfoundland, would under this chapter be a misdemeanor, shall be guilty of that misdemeanor as principal, and be liable to be indicted, proceeded against, tried, and convicted in any place in Newfoundland in which he may be, as if the misdemeanor had been there committed.

**10.** (1.) Where, upon information of an offence against this chapter, a Justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said Justice on or after issuing the summons or warrant, or any other Justice is satisfied by information on oath that there is reasonable cause to suspect that any goods or things, by means of, or in relation to, which such offence has been committed, are in any house or premises of the defendant, or otherwise in his possession, or under his control in any place, such Justice may issue a warrant under his hand, by virtue of which it shall be lawful for any constable, named or referred to in the warrant, to enter such house, premises, or place, at any reasonable time by day, and to search there for, and seize, and take away, those goods or things; and any goods or things seized under any such warrant shall be brought before a Court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this chapter.

(2.) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this chapter, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause notice to be advertised, stating that unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things, or any of them, to be forfeited

(3.) Any goods or things forfeited under this section, or under any other provision of this chapter, may be destroyed or otherwise disposed of in such manner as the Court by which the same are forfeited may direct, and the Court may, out of any proceeds which may be realized by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

**11.** The Imperial act of the session of the twenty-second and twenty-third years of the reign of her present Majesty, chapter seventeen, entitled "An Act to prevent vexatious indictments for certain misdemeanors," shall apply to any offence punishable on indictment under this chapter in like manner as if such offence were one of the offences specified in section one of that act.

**12.** On any prosecution under this chapter, the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

**13.** No prosecution for an offence against this chapter shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the discovery thereof by the prosecutor, whichever expiration first happens.

**14.** Whereas it is expedient to make further provision for prohibiting the importation of goods which if sold would be liable to forfeiture under this chapter, be it therefore enacted as follows:

(1.) All such goods, and also all goods of foreign manufacture, bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom or Newfoundland, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into Newfoundland, and subject to the provisions of this section shall be included among goods pro-

hibited to be imported as if they were specified in section 105 of chapter eight of these consolidated statutes.

(2.) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the customs, the Board of Revenue may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.

(3.) The Board of Revenue may, from time to time, make, revoke and vary regulations, either general or special, respecting the detention and forfeiture of goods, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4.) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom or Newfoundland, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in Newfoundland.

(5.) Such regulations may apply to all goods, the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods, or of offences in relation to such goods.

(6.) The Board of Revenue, in making and administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Governor in Council.

(7.) The regulations may provide for the informant reimbursing the Board of Revenue all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(8.) All regulations under this subject shall be published in the *Royal Gazette*.

(9.) This section shall have effect as if it were part of chapter eight of these consolidated statutes.

**15.** On the sale, or in the contract for the sale, of any goods to which a trade mark, or mark, or trade description, has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged, or falsely applied, or that the trade description is not a false trade

description within the meaning of this chapter, unless the contrary is expressed in some writing, signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

**16.** Where at the passing of this chapter, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this chapter, with respect to false trade descriptions, shall not apply to such trade descriptions when so applied: Provided that where such trade descriptions includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

**17.** (1.) This chapter shall not exempt any person from any action, suit, or other proceeding, which might, but for the provisions of this chapter, be brought against him.

(2.) Nothing in this chapter shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this chapter.

(3.) Nothing in this chapter shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in Newfoundland, who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

**18.** Any person who falsely represents that any goods are made by a person holding a royal warrant, or for the service of Her Majesty, or any of the royal family, or any government department, shall be liable, on summary conviction, to a penalty not exceeding one hundred dollars.

**19.** A register of trade marks shall be kept at the office of the Colonial Secretary, in which any proprietor of a trade mark may have the same registered on complying with the provisions of this chapter.

**20.** (1.) For the purposes of this chapter, a trade mark must consist of or contain at least one of the following essential particulars:

(*a.*) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

(*b.*) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark ; or

(*c.*) A distinctive device, mark, brand, heading, label or ticket; or

(*d.*) An invented word or invented words; or

(*e.*) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2.) There may be added to any one or more of the essential particulars mentioned in this section, any letters, words or figures, or of any of them; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3.) Provided as follows:

(*a.*) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business; but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof;

(*b.*) Any special and distinctive word or words, letter, figure or combination of letters or figures, or of letters and figures used as a trade mark before the coming into force of these Consolidated Statutes, may be registered as a trade mark under this chapter.

**21.** A trade mark must be registered for particular goods or classes of goods.

**22.** A trade mark may be registered in any colour or colours, and such registration shall (subject to the provisions of this chapter) confer on the registered owner the exclusive right to use the same in that or any other colour or colours.

**23.** The Colonial Secretary, subject to the approval of the Governor in Council, may make rules and regulations, and adopt forms for the purposes of this chapter as respects trade marks, and all documents executed according to the same, and accepted by the Colonial Secretary, shall be deemed to be valid so far as relates to official proceedings under this chapter.

**24.** The proprietor of a trade mark may have it registered on forwarding to the Colonial Secretary, together with the fee hereinafter mentioned, a drawing and description in duplicate of such trade mark,

and a declaration that the same was not in use to his knowledge by any other person than himself at the time of his adoption thereof.

**25.** (1.) Before any action is taken in relation to an application for registering a trade mark, the following fees shall be paid to the Colonial Secretary, that is to say:—

| | |
|---|---|
| On every application to register a trade mark, including certificate ... ... ... ... ... ... | $20.00 |
| For the recording of an assignment ... ... ... | 1.00 |

Such fees to be paid by the Colonial Secretary to the Receiver General for the use of the colony.

(2.) If the Colonial Secretary refuses to register the trade mark for which application is made, the fee shall be returned to the applicant or his agent, less five dollars, which shall be retained as compensation for office expenses.

**26.** The Colonial Secretary may object to register any trade mark in the following cases:

(1.) If the trade mark proposed for registration is identical with or resembles a trade mark already registered.

(2.) If it appears that the trade mark is calculated to deceive or mislead the public.

(3.) If the trade mark contains any immorality or scandalous figure.

(4.) If the so-called trade mark does not contain the essentials necessary to constitute a trade mark properly speaking.

**27.** On compliance with the requirements of this chapter, and of the rules hereinbefore provided for, the Colonial Secretary shall register the trade mark of the proprietor so applying, and shall return to the said proprietor one copy of the drawing and description with a certificate, signed by the Colonial Secretary, to the effect that the said trade mark has been duly registered in accordance with the provisions of this chapter; and the day, month and year of the entry of the trade mark in the register, shall also be set forth in such certificate; and every such certificate purporting to be so signed shall be received in all courts in Newfoundland as *prima facie* evidence of the fact therein alleged without proof of the signature.

**28.** A trade mark once registered and destined to be the sign in trade of the proprietor thereof, shall endure without limitation.

**29.** Every trade mark duly registered shall be assignable in law, and on the assignment being produced, and the fee hereinbefore prescribed being paid, the Colonial Secretary shall cause the name of the assignee, with the date of the assignment and such other details as he shall see fit, to be en-

tered on the margin of the register of trade marks, on the folio where such trade mark is registered.

**30.** Every person, other than the person who has registered the trade mark, who marks any goods, or any article of any description whatsoever, with any trade mark registered under the provisions of this chapter, or with any part of such trade mark, whether by applying such trade mark, or any part thereof, to the article itself or to any package or thing containing such article, or by using any package or thing so marked which has been used by the proprietor of such trade mark, or who knowingly sells or offers for sale any article marked with such trade mark, or with any part thereof, with the intent to deceive and to induce any person to believe that such article was manufactured, produced, compounded, packed or sold by the proprietor of such trade mark, is guilty of a misdemeanor and liable for each offence to a fine not exceeding one hundred dollars and not less than twenty dollars, which fine shall be paid to the proprietor of such trade mark, together with the cost incurred in enforcing and recovering the same.

(1.) Every complaint under this section shall be made by the proprietor of such trade mark, or by some one acting on his behalf and thereunto duly authorized.

**31.** An action or suit may be maintained by any proprietor of a trade mark, which has been registered in pursuance of this chapter, against any person who uses his registered trade mark, or any fraudulent imitation thereof, or who sells any article bearing such trade mark or any such imitation thereof, or contained in any package, being or purporting to be his, contrary to the provisions of this chapter.

# TITLE XIII.

## OF SHIPS AND SHIPPING, &c.

## CHAPTER 113.

### Of Surveyors of Shipping and Registry of Ships.

SECTION
1.—Governor may appoint registrars of shipping.
2.—Surveyors of shipping. Fees.
3.—Change of master to be endorsed on register.

**1.** The Governor in Council may appoint, for every port or place in the colony and its dependencies at which it may be deemed expedient to authorize the registry of ships, the principal officer of customs at such

port or place to be a registrar for all the purposes contemplated by the statutes of the parliament of Great Britain and Ireland relating to merchant shipping.

**2.** The Governor in Council may appoint at any port or place in the colony and its dependencies an officer to superintend the survey and measurement of ships in conformity with the said statutes; and such officer shall be entitled to recover from the owner fees for the measurement of every vessel about to be registered for the first time, or requiring measurement for the purposes of registry, as follows:

One dollar and eighty cents for vessels under fifty tons, and measured in three sections.

Three dollars for vessels under fifty tons, and measured in five sections.

Three dollars for vessels from fifty to one hundred tons.

Six dollars for vessels over one hundred tons;
and reasonable travelling expenses, not exceeding twenty-five cents per mile necessarily travelled.

**3.** Any assistant collector, sub-collector, or preventive officer, shall have the same power to endorse on the certificate of registry of any ship, at any port where such ship may be, any change of master taking place at that port, as is given to registrars of shipping under this chapter, and the act of the said parliament known as the "Merchant Shipping Act, 1854."

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# CHAPTER 114.

## Of the Merchant Shipping Service, and Desertion from the Royal Navy.

SECTION
1.—Ships registered in this colony, their owners, &c., to be subject to the shipping laws of Great Britain, as to agreements, wages, &c.
SECTION
2.—Seamen deserting ship registered in this colony, may be arrested and imprisoned; Proviso.
3.—Deserters from the Royal Navy.
4.—Hospital dues.

**1.** Sea-going ships registered in this colony, their owners, masters and crews, and all other persons in relation thereto, when and while such ships, owners, masters, crews and persons are within this colony shall, (so far as the same can be applied) be subject in respect of shipping and discharge, agreements, wages and effects, rights, remedies and penalties, to the law for the time being of Great Britain concerning colonial British registered

ships when in the United Kingdom or out of the jurisdiction of their respective Governments, as the case may be: Provided, that no amendment or alteration of the present law of Great Britain in regard to the matters aforesaid shall, for the purpose of this chapter, apply to this colony until six months after the passing of such amendment or alteration, and in the meantime the law as it previously stood shall apply and be executed in this colony.

**2**. Any seaman refusing to join or absenting himself without reasonable cause from any ship registered within this colony or its dependencies, after entering into an agreement for service, as required by the provisions of the Acts relating to merchant shipping, shall be deemed guilty of an offence against the provisions of this chapter, and may be arrested and brought before a stipendiary Magistrate, and on conviction thereof may be imprisoned for any period not exceeding twenty-one days, unless after being arrested he consents to return to perform his duty on board such ship, in which case he may, by order of any Magistrate, if such Magistrate is satisfied it ought to be done, be released from imprisonment and conveyed by the police on board the said ship. The cost of such arrest and proceedings, not exceeding five dollars, may be deducted from the wages of such seaman then due or to become due.

**3**. A reward of fourteen dollars shall be paid by warrant of the Governor on the Receiver General to any person for the apprehension of any deserter from any ship belonging to the Royal Navy, upon producing a certificate of the Commander or chief officer of any such ship, or of any stipendiary Magistrate, stating that such deserter has been delivered to him, and all persons may apprehend such deserter without warrant.

**4**. The master or owner of every vessel registered in this colony and sailing on foreign voyages shall, before the entry inwards of such vessel at the customs at the port of St. John's, pay to the Receiver General the sum of twelve cents per month for every seaman on board such vessel, to be applied towards the support of the St. John's hospital, and the master or owner paying such amount may retain the same from the wages due to such seaman.

# CHAPTER 115.

## Of Passenger Accommodation on board Steamers and Sailing Vessels.


SECTION
1.—Governor may appoint surveyors and fix remuneration.
2.—Owners of passenger steamers to have them surveyed twice a year; surveyors to report to customs; certificate of number of passengers—cabin, deck; form of certificate to be filed at customs; proviso; penalty.
3.—Penalty for taking more passengers than allowed by such certificate; additional penalty.
4.—Penalty for making false certificate, or assisting.
5.—Penalty for being wrongfully on board passenger steamer.
6.—Separate apartments for females engaged as servants in the fishery; sanitary accommodation.
7.—One person per ton—maximum.
8.—Boat accommodation.
9.—Rules.
10.—Penalties.
11.—Recovery of penalties.


**1.** The Governor in Council may appoint a sufficient number of competent persons to be surveyors for the purposes of this chapter, and may remove such surveyors, and may fix and alter the rates of remuneration to be received by such surveyors.

**2.** The owner of every steamer carrying passengers coastwise shall cause such steamer to be surveyed at least twice in every year, at intervals of six months, by two of the surveyors appointed as aforesaid, and such surveyors shall make their report of such survey to the assistant collector of customs, who shall, upon receipt of such report and its confirmation by the Governor in Council, give to such owner a certificate of the following particulars:

The number of passengers which such steamer is, in the judgment of the surveyors, fit to carry, distinguishing if necessary between the respective number to be carried on the deck and in the cabins, such numbers to be subject to such conditions and variations, according to the time of the year, the nature of the voyage and other circumstances, as the case requires; such certificates shall be in duplicate, and in form as follows:

"This ship (the name of the ship) is fit to carry, when there is no incumbrance of passenger accommodation,—

| Fore Cabin Passengers. | After Cabin Passengers. | Deck Passengers. | Total Passengers. |
|---|---|---|---|
| Number. | Number. | Number. | Number. |

One part of such certificate shall be filed at the Customs in St. John's: Provided that such surveys of passenger steamers shall also be held at any time that the Governor in Council may deem expedient.

Any owner neglecting or failing to comply with the provisions of this section shall incur a penalty not exceeding two hundred dollars for every offence.

**3.** If the owner or master, or other person in charge of any passenger steamer, receives on board thereof, or on or in any part thereof, or if such ship has on board thereof any number of passengers which, having regard to the time, occasion and circumstances of the case, is greater than the number of passengers allowed by the certificate, the owner or master shall incur a penalty not exceeding one hundred dollars, and an additional penalty not exceeding one dollar for every passenger over and above the number allowed by the certificate.

**4.** Every person who knowingly and wilfully makes, or assists in making, or procures to be made, a false or fraudulent certificate with respect to any passenger steamer requiring a certificate under this chapter, or who forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any certificate required by this chapter, or any words or figures in any such certificate or any signature thereto, shall be deemed guilty of a misdemeanor.

**5.** Any person wrongfully persisting in going on board of or refusing to depart from on board any passenger steamer, when lawfully requested, shall incur a penalty of twenty-five dollars.

**6.** Sailing vessels carrying females engaged as servants in the fishery, or as passengers, between Newfoundland and Labrador, shall be provided with such separate cabins or apartments as will afford, at least, fifty cubic feet for each of such females; and the owners of such vessels shall provide for such females sufficient accommodation for sanitary purposes.

**7.** No more than one person for each registered ton shall be carried in sailing vessels proceeding to or returning from Labrador

**8.** The owners of such vessels shall provide sufficient boat accommodation for at least one-third of the persons on board such vessels carrying passengers between Newfoundland and Labrador.

**9.** The Governor in Council may make rules and regulations for effectually carrying out the provisions of sections six, seven and eight, of this chapter, and alter and amend the same, from time to time, which rules and regulations, when published in the *Royal Gazette*, shall be construed to form part of this chapter, and shall have the same effect in law as if they had been specially incorporated herein.

**10.** For all violations of this chapter not hereinbefore provided for there shall be imposed a penalty not exceeding one hundred dollars for each offence, or in default of payment, of imprisonment for a term not exceeding three months.

**11.** All fines, penalties, and forfeitures, under this chapter, shall be recovered and imposed in a summary manner before a stipendiary Magistrate; and for the purposes of this chapter every stipendiary Magistrate shall have jurisdiction over this colony and its dependencies.

# CHAPTER 116.

## Of a Marine Court of Inquiry.

SECTION
1.—Governor to commission three persons as Marine Court of Enquiry. President. Form of proceedings.
2.—Jurisdiction.
3.—Impeding inspection. Penalty.
4.—Power of summoning witnesses, regulating the proceedings, and enforcing penalties.
5.—Governor may appoint persons at other places to make enquires, &c.
6.—Orders respecting costs.
7.—Conclusion of case. Statement of decision. Report.
8.—Court may demand certificate, &c.
9.—Not to affect Admiralty Court.

**1.** The Governor in Council may, whenever occasion shall require, by commission under his hand and seal, appoint three persons to form a Court, called the Marine Court of Enquiry; and such Court shall comprise one person of judicial knowledge and habits, and two persons of nautical skill and experience, and in the commission may be indicated the person to preside over the Court. The proceedings of the Court shall be assimilated, as far as possible, to those of ordinary Courts of Justice, with the like publicity.

**2.** In cases following, that is to say:

Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of this island and its dependencies;

Whenever any ship causes loss or material damage to any other ship, on or near the coasts of this island or its dependencies, or in any roadstead or harbour thereof;

Whenever by reason of any casualty happening to or on board of any ship on or near the coasts of this island or its dependencies, or in any roadstead or harbour thereof, loss of life ensues;

Whenever any such loss, abandonment, damage or casualty happens elsewhere, and any competent witness or witnesses thereof arrive or are found at any place within this island or its dependencies;

Whenever a charge of misconduct or incompetency is brought by any person against a master, mate or engineer of a British ship;

Such Court may hear and enquire, and generally exercise the powers and perform the duties given and prescribed by the act of the parliament

of Great Britain and Ireland, known as the Merchant Shipping Act, 1854, as amended by the Merchant Shipping Act, 1862, or as the same may be amended; and may also exercise the powers given to inspectors appointed by the Board of Trade: Provided that the duty of inspection may be performed by any one or more members of such Court, or by one or more competent persons to be appointed by the said Court.

**3.** Every person wilfully impeding such inspection, or wilfully impeding any person engaged in such inspection, whether on board ship or elsewhere, shall incur a penalty not exceeding forty dollars, and may be seized and detained by any such person, or others who may be called to assist, until such offender can be conveniently taken before some Justice; and such penalty shall be recovered, and such offender dealt with, in the same manner as nearly as applicable as in the case of a person impeding an inspector under part first of the said Merchant Shipping Act, 1854.

**4** The said Court shall, so far as relates to the summoning of parties, compelling the attendance of witnesses, the regulation of its proceedings, and the enforcing of penalties and of obedience to the judgment or orders of the Court, have the same powers as Justices would have if the proceedings related to an offence or cause of complaint upon which they had power to make a summary conviction or order, or as near thereto as circumstances permit; and the said Marine Court of Enquiry may exercise the jurisdiction and authority conferred on Justices under the third section of this chapter.

**5.** The Governor in Council may, upon any occasion which he may see fit and at whatever place may be necessary, appoint any other persons to a tribunal authorized to make enquiry into the several matters aforesaid, with the like powers as the Court hereinbefore mentioned.

**6.** The Court may make such order with respect to the costs of any such investigation, or any portion thereof, as they shall deem just; and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before a Justice.

**7.** Upon the conclusion of the case, or as soon afterwards as possible, the Court shall state in open Court the decision to which they may have come with respect to cancelling or suspending certificates, and shall in all cases send a full report upon the case, with the evidence, and with the judgment and opinion thereon, and such observations, if any, as the Court may think fit, to the Governor, for transmission to the Board of Trade; and shall also, if they determine to cancel or suspend any certificate, forward such certificate to the Governor, for transmission to the Board of Trade, with their report.

**8.** The Court may, if they think proper, require any master, mate or engineer, possessing, possessing a certificate of competency or service, whose conduct is called in question or appears to them likely to be called in ques-

tion in the course of such investigation, to deliver such certificate to them; and if their report is to cancel or suspend such certificate, shall forward the same to the Governor, to be transmitted to the Board of Trade; or, if such be not their decision then such certificate shall be returned; and if any master, mate or engineer fail to deliver his certificate when so required, he shall incur a penalty not exceeding two hundred dollars.

9. Nothing in this chapter contained shall affect in any way the jurisdiction of the Supreme Court of Newfoundland in Admiralty, however acquired.

# CHAPTER 117.

## Of Certificates to Masters and Mates.

SECTION
1.—Examination of masters and mates; Rules. Proviso.
2.—First examiners; future examiners.
3.—Fees by applicants.
4.—Certificates of competency. Provisoes.
5.—Certificates of service.
6.—After 31st Dec., 1876, masters and mates to be certified.
7.—After 31st Dec., 1876, no clearance without production of certificates.
8.—Lost certificate provision.
9.—False representation; penalty.
10.—Cancelled certificate to be delivered up.
SECTION
11.—Certificates in duplicate.
12.—Facilities to be afforded.
13—Fees paid over.
14.—Merchants Shipping Act, 1854, repealed in part.
15.—Power of cancelling or suspending.
16.—Owner of certificate to be served with statement before adjudication; on trials by Magistrates two must concur.
17.—Tribunals after hearing, to state decision and report to Governor.
18.—Governor in Council may alter forms of certificates.

1. Examinations shall be instituted in this colony, of persons who intend to become masters or mates of sea-going ships, hereinafter mentioned; and the Governor in Council may appoint Examiners to conduct such examination at St. John's, and may, from time to time, lay down and make rules for the conduct and regulations of such examinations, and as to the qualification of the applicants, as nearly as may be in accordance with the regulations of the Board of Trade in England, and such rules shall be adhered to by the Examiners. Provided that examinations for certificates of competency as masters and mates, shall be instituted in this colony only upon proof that the previous service at sea of the person applying for the same has been such as is required by the regulations for the time being in force in the United Kingdom, with respect to certificates of the like grade.

2. The examiners appointed under this chapter shall be such persons as may produce proof to the satisfaction of the Governor in Council of their fitness and competency to act as such, and one of whom shall be called the Examiner in Chief, and the other two assistant Examiners. But, after three persons have been so appointed Examiners, no person

shall be appointed an Examiner unless he has himself passed a satisfactory examination before two or more Examiners as to his fitness and competency to act as an examiner, and has received from them a certificate to that effect.

**3.** All applicants for examination shall pay, previous to examination, to the Colonial Secretary, the following mentioned fees, that is to say: for a certificate as master, ten dollars; for certificate as mate, five dollars; and in the event of any applicant failing to procure his certificate of qualification on his first examination, he will be entitled to a second examination without payment of any additional fee; but if he fail to procure his certificate of qualification on such second examination, he shall pay the same fee previous to any subsequent examination as is hereby required to be paid previous to a first examination for the certificate he seeks to procure.

**4.** The Governor in Council shall deliver to every applicant who is duly reported by the Examiner-in-Chief, and one of the assistant Examiners, to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and general good conduct, on board ship, a certificate (hereinafter called a certificate of competency for sea-going ships), to the effect that he is competent to act as master, or as first mate, or only mate, of a sea-going ship, registered in Newfoundland, as the case may be. Provided that in every case in which the Governor in Council has reason to believe such report to have been unduly made, he may remit the case to the same or to any other Examiners, and may require a re-examination of the applicant, or a further enquiry into his testimonials and character, before granting him a certificate. And provided that certificates of competency granted contrary to the provisions of section one of this chapter, or upon any false, incorrect, or insufficient proof, certificate or report of service, qualification, conduct, or character, shall be regarded as improperly granted.

**5.** Certificates of service for sea-going ships, differing in form from certificates of competency, may be granted as follows, that is to say:

(1.) Every person who, before the thirty-first day of December, 1875, has served as master in a sea-going ship, and who has produced satisfactory evidence at such examination, of his sobriety, experience, ability, and general good conduct, on board ship, shall be entitled to a certificate of service as master for sea-going ships, on payment of a fee of ten dollars.

(2.) Every person who, before the thirty-first day of December, 1875, has served as mate in a sea-going ship, and who has produced satisfactory evidence, in manner aforesaid, of his sobriety, experience, ability, and general good conduct on board ship, shall be entitled to a certificate of service as first or only mate for sea-going ships, on payment of a fee of five dollars;

and each of such certificates of service for sea-going ships, shall contain particulars of the name, place, and time of birth, and of the length and nature of the previous service, of the person to whom the same is issued; and thereupon the Governor in Council may issue such certificate of service to the various persons, respectively entitled thereto.

6. No ships registered in Newfoundland, over one hundred tons registered tonnage, shall go to sea from any port or place out of Newfoundland or its dependencies, save to the United States of America or the Dominion of Canada, unless the master and first mate or only mate thereof have obtained and possess valid certificates, either of competency or service for sea-going ships, appropriate to their several stations in such ships, or of a higher grade, from the Board of Trade in the United Kingdom, or valid certificates of competency appropriate to their several stations in such ships, or of a higher grade granted in any British possession, and declared by order of Her Majesty in Council, published in the London *Gazette* under the provisions of the Merchant Shipping (Colonial) Act, 1869, or of any Act of the parliament of the United Kingdom containing such provisions, to be of the same force as certificates of competency for foreign-going ships, granted under the Acts of the parliament of the United Kingdom relating to merchant shipping; and every person who, having been engaged to serve as master or first mate, or only mate, of any sea-going ship, registered in Newfoundland, over one hundred tons registered tonnage, goes to sea as aforesaid after that date as such master or mate, without being at the time entitled to, and possessed of, such certificate either of competency or of service for sea-going ships, as hereinbefore required, or who employs any person as master, first mate, or only mate, of any sea-going ship, as aforesaid, without first ascertaining that he at the time is entitled to and possessed of such certificate, shall, for each such offence, incur a penalty not exceeding one hundred dollars.

7. The master of every sea-going ship, registered in this colony, over one hundred tons register tonnage, shall produce to every officer of the customs in this colony, to whom he applies for a clearance of such ship, on any such voyage by sea, as aforesaid, the certificates of compency or service for sea-going ships, which the said master and his first mate or only mate are hereby required to possess, and no officer of the customs, at any port in this colony, shall clear any such ship on any such voyage, as aforesaid, after that date, without such certificate being first produced to him; and if any master, mate, or other officer of any ship, attempts to sail or take such ship to sea from any port in Newfoundland on any such voyage as aforesaid, after that date, until the requirement of this chapter has been fully complied with, such master, mate, or other officer, shall, for every such offence, incur a penalty of not exceeding one hundred dollars: Provided that if a vessel be in any other port than Saint John's or Harbour Grace, immediately preceding any voyage, and the master shall die or be prevented going on such voyage from illness, and it be made to appear to the officer of the customs that no master holding a certificate can be ob-

tained, such officer may clear the vessel with the mate acting as master for that voyage.

**8.** Whenever any master or mate proves, to the satisfaction of the Governor in Council, that he has, without fault on his part lost or been deprived of any certificate already granted to him, the Governor in Council may, on payment of one-half the fee charged for the original certificate, cause a copy or duplicate of the original certificate to be made out and certified, as aforesaid, and to be delivered to him, and any copy which purports to be so made and certified as aforesaid, shall have all the effect of the original.

**9.** Every person who makes, or procures to be made, or assists in making, any false representation for the purpose of obtaining for himself or any other person, a certificate either of competency or service, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such certificate or any official copy of any such certificate, or who fraudulently makes use of any such certificate which is forged, altered, cancelled, or suspended, or to which he is not justly entitled, or who fraudulently lends his certificate to, or allows the same to be used by, any other person, shall for each offence be guilty of a misdemeanor.

**10.** Every master or mate whose certificate is cancelled or suspended, shall deliver it to the Colonial Secretary of this colony, unless he has already delivered it to the Court or tribunal before which his conduct was called in question in the course of the investigation upon which it is cancelled or suspended, and in default shall, for each offence, incur a penalty not exceeding two hundred dollars.

**11.** All certificates whether of competency or service, shall be made in duplicate, and one part shall be delivered to the person entitled, and the other shall be kept and recorded in the office of the Colonial Secretary of this colony; and all documents purporting to be certificates granted by the Governor in Council, in pursuance of this chapter, shall be received in evidence, and shall be deemed to be such certificates without further proof, unless the contrary be shewn; and whenever notice of the cancelling, suspending, altering, or otherwise affecting, by competent authority, any such certificate, is received by the department, there shall thereupon be made a corresponding entry in the record of certificates, and a copy or duplicate of any such certificate, purporting to be certified by the Colonial Secretary, shall be *prima facie* evidence, as aforesaid, of any entry made, as aforesaid, and in respect of any such certificate shall be *prima facie* evidence of the truth of the matter stated in such entry.

**12.** The Governor in Council may, from time to time, make provision for affording facilities for imparting to sea-faring men desirous of becoming applicants for certificates of competency under this chapter, such information as to the theory of navigation as may fit them for examination, and

may defray the expenses thereby incurred out of the money that may be voted by the Legislature for that purpose.

**13.** All fees received under this chapter shall be paid over to the Receiver General.

**14.** And whereas by section 547 of the Act of the parliament of the United Kingdom, passed in the session thereof held in the 17th and 18th years of Her Majesty's reign, chapter 104, "To amend and consolidate the Acts relating to Merchant Shipping," known as the "Merchant Shipping Act, 1854," it is enacted that the Legislative authority of any British possession shall have power, by an Act or Ordinance confirmed by Her Majesty in Council, to repeal wholly or in part any provisions of the said Act relating to ships registered in such possession; therefore upon, from and after the commencement of this chapter, having first received such approval, so much of the provisions of the said Act, and of any Act of the said parliament amending the same, and forming and to be constituted a part thereof, relating to ships registered in Newfoundland, as is inconsistent with this chapter, shall be repealed, but this repeal shall not affect the past operation of any of the said provisions or sections, or the validity of any thing already done, or of any certificate already granted, or any right, title, obligation, or liability already accrued thereunder.

**15.** The power of cancelling or suspending the certificate of a master or mate shall vest in and be exercised by a Marine Court of Enquiry, constituted under chapter 116, of these statutes, entitled "Of a Marine Court of Enquiry," by Magistrates' Naval Court, Admiralty Court, or other Court or Tribunal, by which any charge, complaint, or case, is investigated or tried; or by the Board of Trade, if such master or mate is shown to have been convicted of any offence.

**16.** No certificate shall be cancelled or suspended under this chapter, unless a copy of the report or statement of the case, upon which the investigation is had, shall have been furnished to the owner of the certificate before the commencement of the investigation. Nor in the case of investigation conducted by Justices or by stipendiary Magistrates, unless two Magistrates at least express their concurrence in the report.

**17.** The Courts or tribunals mentioned in the 15th section of this chapter shall at the conclusion of the case, or as soon afterwards as possible, state in open Court the decision to which they have come with respect to cancelling or suspending certificates, and shall in all cases send a full report upon the case, with the evidence, to the Governor, for transmission to the Board of Trade.

**18.** The Governor in Council may, by proclamation, make such alterations in the forms of mates' certificates, or otherwise in relation to the provisions of this chapter, as shall be in conformity with Imperial Acts, and with such instructions from the Board of Trade as may be communicated to the Governor, and such proclamation shall be construed with this chapter and as if the same were herein specifically enacted.

# CHAPTER 118.

## Of Newfoundland Lloyds' Classification and Registry of Shipping, and the Encouragement and Improvement of Ship-building.


SECTION
1.—A bounty shall be granted upon all decked vessels.
2.—Vessels claiming bounty shall be inspected by Lloyds' Surveyor.
3.—Ten cents per ton shall be paid on all vessels surveyed.
4.—Annual survey of foreign-going vessels.
5.—Mode and times of survey.


**1.** Upon all vessels having a whole or fixed deck, newly built or equipped in every respect with new materials, from the keel up, in this colony, and registered therein, after the 30th day of May, 1891, there shall be granted a bounty as hereinafter provided, payable out of the general revenue of this colony. Such bounty shall be paid by warrant on the Receiver General to the person for whom such vessel was built, or some other person duly authorized by him to receive the same, upon proof of registration according to law.

**2.** Vessels in respect of which bounty may be claimed must be shewn to have been well and substantially built in a workmanlike manner, and equipped in every respect with new material, upon which duty has been paid in this colony, and in accordance with schedules A, or B, and shall be subject to inspection and survey by the Lloyds' Surveyor engaged by the Government under 53 Vic., cap. 25, or other person appointed by him as his deputy, and no bounty shall be paid unless upon the certificate of such Lloyds' Surveyor or other person so appointed, that such vessel has been built well and substantially, and in accordance with the said schedules.

**3.** Towards raising the funds necessary for the payment of the salary of such Surveyor, a fee of ten cents per ton shall be paid by the owner of every vessel surveyed by the said Surveyor or his deputy, which amount shall be deducted from the amount of bounty payable thereunder.

**4.** All steam or sailing vessels engaged in the foreign trade of this colony, or vessels prosecuting the deep-sea and Labrador fisheries, registered in this colony or elsewhere, from any port in this colony, shall be annually surveyed for the purpose of showing that such vessels are in an efficient condition in every particular to proceed on any foreign voyage or in the prosecution of such fishery or fisheries. Before any such vessels shall proceed on any foreign voyage or to the prosecution of such fishery or fisheries, notice by the owner or master of said vessels shall be given to the said Lloyds' Surveyor or his deputy that said vessels are cleaned and in every way ready for survey. The said Lloyds' Surveyor or his deputy may make any recommendations for the purpose of placing such vessels in

such condition as he may consider seaworthy. Such recommendations shall be duly carried out by the owner or master under a penalty of five hundred dollars, to be recovered in a summary manner before a stipendiary Magistrate or Justice of the Peace: Provided also, that no certificate of class shall be granted to any vessel the owner or master of which shall have refused or neglected to make the repairs or carry out the recommendations suggested by the said Lloyds' Surveyor or his deputy. A sum of five cents per registered ton shall be charged for the survey provided under this sertion.

5. The Lloyds' Surveyor shall, from time to time, survey all such vessels upon which bounty is to be paid; such bounty shall be paid according to Newfoundland Lloyds' local class for a term of seven, ten, or thirteen years, the seven years class to receive four dollars, the ten years class to receive five dollars, and the thirteen years class to receive six dollars bounty per ton on builder's measurement. No bounty shall be paid on any vessel which cannot command a seven years class. Upon application the Lloyds' Surveyor shall furnish particulars for the various classes in this section specified. Surveys on such vessels shall be held as follows:

1 When the vessel is in full frame.

2. When the planking is completed and the beams in place, and the knees as well. No deck to be put down until the second survey is completed.

3. Upon the completion of the vessel.

If, after the third survey, the recommendations of the Lloyds' Surveyor shall have been carried out to his satisfaction in every respect, a certificate shall be issued by said Lloyds' Surveyor, upon which certificate bounty shall be paid The term of years for which any vessel shall be classed will be granted by the Government in accordance with the certificate granted by the said Lloyds' Surveyor, which certificate shall be withheld until all fees herein provided for shall have been paid to the Receiver General The deputies to be appointed by the Lloyds' Surveyor, under the provisions of this chapter, shall be paid by the Receiver General such fees as the Governor in Council may determine upon the certificate of the Lloyds' Surveyor. Any vessel having received a class shall be exempt from annual survey up to the expiration of half the time for which it has received a class. Any surveyor giving a false certificate under this chapter shall, on conviction before a stipendiary Magistrate, be liable to a penalty not exceeding five hundred dollars, or to imprisonment for a period not exceeding twelve months.

## SCHEDULE A.

All vessels of one hundred tons and upward may be classed at Lloyds if the owners thereof so desire, in which case Lloyds' rules relating to the construction of vessels must be carried out. A copy of such rules shall be sent to all known ship-builders in this colony.

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## SCHEDULE B.

### Vessels Claiming Bounty and Local Class.

The thickness of plank used in planking, ceiling and decking, shall be—

For vessels of twenty tons and under: planking not less than one and a-half inches; ceiling one and a-half inches; decking two inches.

For vessels from twenty to thirty tons: planking not less than two inches; ceiling two inches; decking two and a-half inches.

For vessels from thirty to forty tons: planking two and a-quarter inches; ceiling two inches; decking two and a-half inches.

For vessels from forty to ninety tons: planking two and a-half inches; ceiling two and a-quarter inches; decking three inches.

For vessels from ninety tons upwards: planking not less than three inches; ceiling two and a-half inches; decking three inches.

Plank and ceiling shall be through fastened; there shall be one bolt or trenail in each timber for every strake of plank and ceiling in all vessels over twenty-five tons. Vessels under that measurement may be fastened under the bilge with galvanized or composition nails, one in each timber for every strake or plank. Nails are not to be used in substitution for bolts in planking vessels over thirty tons.

All planks over seven inches in width shall have two bolts or trenails in each timber, and caulked outside and wedged inside.

The frame shall be of good, squared, sound timbers, which shall not be more than five inches apart and thoroughly fastened together with fore-and-aft bolts.

For planking there shall not be less than five feet shift between the butts, and two butt bolts and one rivet bolt through each butt.

In timbering a vessel there shall be two trenails in each locking, and the locking shall be keyed.

Any vessel with a rise deck shall have main decks go aft under the rise deck to the next beam. The rise deck beam shall have a rivet bolt through and bolted two feet apart, deck knees between the beams fore-and-aft, stringers at bilge one inch thicker than ceiling, and to be two to four feet wide according to tonnage.

One pair stringers each side of the bows, with breast hook.

One pair pointers aft.

Plates for bob-stay and fore-stay shall come back on main plank, eighteen inches long, and shall have three bolts in each plate.

For stem, keel and stern post, there shall be good dove-tail plates.

Each vessel shall have a good windlass and windlass bits rivetted and bolted through the beams.

Each vessel shall be furnished with suitable chains, anchors, chain-plates, dead-eyes, hawse-pipes, rigging, sails and spars, according to tonnage, all of which shall be new.

Each vessel shall be supplied with two pumps.

In all vessels built for classification, the keel, stem, stern-post, the outside planking, from the keel to the light-water line, shall be of birch, or other good, sound, hard wood; and the bilge planks, both inside and outside, shall be one inch in thickness more than the plank above the bilges. The planking from the bilges upwards may consist of juniper, or good, sound spruce. Every vessel shall have as many pairs of additional strap-iron knees as to the Lloyds' Surveyor shall seem necessary. In the building of all vessels, three strakes of planking shall intervene before more than one butt is fixed to the same timber; no timber shall be used in the construction of any vessel until the period of twelve months shall have expired from the time of its being cut.

# CHAPTER 119.

## Of Pilots and Pilotage for the Port of St. John's.


SECTION
1.—Number of Commissioners of Pilots for St. John's.
2.—Pilots must be qualified.
3.—Certificates to be granted.
4.—Certificates to be numbered.
5.—Commissioners may establish bye-laws.
6.—Rules subject to approval of Governor in Council.
7.—Commissioners may make rules for punishing breach of regulations.
8.—Rates of pilotage.
9.—Every vessel to shew flag.
10.—Sailing vessels not to pay pilotage more than once in thirty days.
11.—Licensed pilot to carry flag.

SECTION
12.—Penalty for taking pilot to sea.
13.—Penalty for unlicensed persons acting.
14.—What ships compelled to take a pilot.
15.—Where no licensed pilots.
16.—Commissioners to determine disputed claims.
17.—Method of recovering penalties.
18.—Right of appeal.
19.—How "Pilots Fund" to be invested.
20.—Master pilots to report to Commissioners.
21.—Commissioners to report to Governor in Council.
22.—Relief of superannuated pilots.
23.—Respecting bye-laws.
24.—Confirmation and publication of bye-laws.


**1.** There shall be five commissioners of pilots, three of whom shall be a quorum, for the port of St. John's, who shall act gratuitously, and meet at least once a month. The appointment of such commissioners shall be in the Governor in Council. Every commissioner shall take the following oath before a Judge or Magistrate:

"I, A. B., do swear that I will act diligently, faithfully and impartially in the discharge of the duties of a commissioner of pilots for the port of St. John's."

**2.** The commissioners shall not license any one as a pilot except on due examination they shall find him a fit person to act in that capacity, and until the present number of pilots is reduced to nine, and thereafter never to exceed nine. No more pilots shall be licensed except such persons as were apprenticed to licensed pilots and entered as such in the commissioners' books three years prior to the passage of this chapter.

**3.** The commissioners shall grant certificates to licensed pilots in the following form, and such certificates shall be revocable at pleasure:

CERTIFICATE.

No. PORT OF ST. JOHN'S, NEWFOUNDLAND.

I, C D., Chairman of the Board of Commissioners appointed by law to examine and select pilots for the said port, do hereby certify that E. F., having been examined by the said board, was deemed a fit person to under-

take the pilotage of vessels of every description into and out of the said port, and on the day of , A. D. 18 , was by said board licensed to act in that capacity.

(Signed,) C. D.,
Chairman.

Entered in the Register of Pilots' licenses, this day of , A. D. 18 .

*(This license cannot be lent or transferred.)*

| Age. | Height. | Complexion. | Color of Hair and Eyes. | Remarks. |
|---|---|---|---|---|
| | | | | |

**4.** Every certificate granted to a licensed pilot shall be numbered and registered in a book kept for that purpose and shall be annually renewed. Pilots shall pay four dollars for every such certificate; and in case of loss or defacing the same, not above two dollars for a new certificate. No licensed pilot shall lend or transfer his certificate under a penalty of twenty dollars for the first offence, and for a second offence shall lose his certificate, and shall not be again licensed. Every licensed pilot shall pay annually eight dollars to the secretary of the commissioners for the benefit of the pilots' fund.

**5.** The commissioners may establish bye-laws for the further regulation of pilots and for extra remuneration in cases of an extraordinary nature, and for the adjustment and decision of questions arising between masters of vessels and pilots and others, respecting pilotage, and also respecting the salvage of anchors and cables, and may annex penalties for enforcing the same; but no bye-laws shall be in force until approved of by the Governor in Council.

**6.** Subject to the approval of the Governor in Council, the commissioners may make regulations for the government of licensed pilots and their apprentices, and for ensuring their sobriety and good conduct and constant attendance to, and effectual performance of their duty on board and on shore.

**7.** Subject to the approval of the Governor in Council, the commissioners may make rules for punishing any breach of their regulations by the withdrawal or suspension of the license or certificate of the pilot guilty of such breach, or by the infliction of penalties upon pilots or apprentices; so, however, that every such penalty be capable of reduction at the discretion of the commissioners.

**8.** The rates of pilotage payable by vessels entering or leaving the port of St. John's, shall be as follows, when such vessels are hailed, spoken or boarded by a licensed pilot to the southward or eastward of Cape Spear, or to the northward of Sugar Loaf, and five-sixths of the said rates when hailed, spoken or boarded inside of Cape Spear and to the southward of Sugar Loaf, and before entering the Narrows. No steam or sailing vessel returning to the said port, through stress of weather, shall be compelled to take a pilot on her said return to the said port, nor on her second departure therefrom; provided that such steam or sailing vessel shall not have been gone from or remained in such port during the whole space of twenty-four hours. Nor shall any steam or sailing vessel which shall have proceeded from the port of St. John's to any other port in this colony, on the same voyage, be compelled to take a pilot on her said return to the said port of St John's, nor on her second departure therefrom; provided she shall not have been gone from the said port of St. John's for twenty-four hours. Any pilot exacting a larger sum for his services, or taking a less sum than is allowed by said rates, shall forfeit for such offence the sum of eight dollars, and when he has exacted more, shall refund the excess received by him.

On vessels under eighty tons register measurement, five dollars and thirty-five cents.

On vessels from eighty to one hundred tons, six dollars and seventy cents.

On vessels from one hundred to one hundred and twenty tons, seven dollars and thirty-five cents.

On vessels from one hundred and twenty to one hundred and sixty tons, eight dollars.

On vessels from one hundred and sixty to two hundred tons, eight dollars and seventy cents.

On vessels from two hundred to two hundred and forty tons, nine dollars and thirty-five cents.

On vessels from two hundred and forty to two hundred and eighty tons, Ten dollars.

On vessels from two hundred and eighty to three hundred tons, ten dollars and seventy cents.

On vessels from three hundred to three hundred and fifty tons, thirteen dollars and thirty-five cents.

On vessels from three hundred and fifty to four hundred tons, sixteen dollars.

On vessels from four hundred to five hundred tons, eighteen dollars and seventy cents.

On vessels from five hundred to six hundred tons, twenty-one dollars and thirty-five cents.

On vessels from six hundred to seven hundred tons, twenty-four dollars.

On vessels from seven hundred to eight hundred tons, twenty-six dollars and seventy cents.

Over that size, for every one hundred tons additional, one dollar and thirty-five cents; and on no sailing vessel is the pilotage to exceed thirty-two dollars.

Steamers shall pay pilotage on their net tonnage at the same rate per ton as sailing vessels.

Steamers employed in the fisheries of the colony shall be exempt, except on foreign voyages.

Coastal steamers shall also be exempt.

Subsidized mail steamers, in connection with the colony, shall pay on the horse-power at the rate of eight cents for each horse-power.

No steamer shall pay more than forty-eight dollars at one time.

All coasting vessels, which may take pilots, to pay one-half of the above rates of pilotage, in proportion to their tonnage. The above scale of pilotage shall be payable on the register tonnage of all such vessels, as ascertained before going out of the harbor.

Her Majesty's vessels, under sixth rate, fourteen dollars.

Her Majesty's vessels, of the fourth, fifth and sixth rate, twenty-six dollars.

Her Majesty's vessels, of the first, second and third rate, thirty-four dollars

**9.** Every vessel and steamer obliged to take or pay a pilot shall show either her house-flag, Board of Trade signal, or national flag, before entering the narrows, and in case any vessel or steamer shall enter the narrows without a pilot, and without having shown such house-flag, Board of Trade signal, or national flag, such vessel or steamer shall be subject to the usual pilotage rates.

**10.** No sailing vessel owned or registered in this colony shall be compelled to pay pilotage more than once within a period of thirty days.

**11.** Every licensed pilot shall carry such flag and have his boat so marked and rigged as shall be directed by the commissioners, under a penalty of twelve dollars; and every unlicensed pilot carrying such flag and having his boat so marked and rigged, shall be liable to a penalty of twelve dollars.

**12.** No licensed pilot shall be taken to sea against his will under a penalty of two hundred dollars on the master of the vessel, except when

through stress of weather the same is unavoidable, in which case he shall be entitled to receive from the master or owner of the vessel payment at the rate of sixteen dollars and eighty cents a months for all the time lost, besides the usual meat, drink, and a passage home from the first port the ship shall enter where the same can be obtained.

**13.** Any person taking charge of any vessel as pilot, and not being licensed, shall give up the guidance of the said vessel to the first licensed pilot who shall board such vessel to the eastward of Small Point, under a penalty of eight dollars.

**14.** All ships and vessels shall be obliged to take or pay a pilot, except Her Majesty's ships, vessels belonging to a royal yacht club, coasting vessels, and vessels which have not been boarded, hailed or spoken until after they have entered the Narrows; and no vessel shall be deemed to be a coasting vessel and exempt from the liability of taking a pilot unless such vessel shall have been usually employed as a *bona fide* coaster, or if such vessel shall have on board any part of a cargo imported in such vessel from any port or place out of this colony, or if such vessel shall be going to any place out of this colony or to any outport to load a cargo for any foreign market: Provided that when, in consequence of stormy weather, extreme danger would arise to any boat going outside the Narrows, the commissioners may award pilotage to any pilot who shall in such case have offered his services within the Narrows and have been rejected. For the purposes of this chapter the entrance to the Narrows shall be defined by a line drawn from the Northern Head to the Southern Head at the entrance of this port.

**15.** Nothing herein contained shall deprive any person who may act as a pilot in the absence of licensed pilots, from receiving payment for his services according to the said table of rates, or to relieve any licensed or other pilot from his responsibility to answer for the amount of any loss sustained through his improper conduct in a civil action at the suit of the party injured.

**16.** The commissioners may hear and determine all claims for pilotage, salvage of anchors and cables, and remuneration for extraordinary services in which pilots are concerned under the like forms and proceedings used in the Sessions Court of St. John's for the recovery of small debts; and the amount of such commissioners' judgment and the costs incident thereto to be taxed according to the Sessions Court scale, shall be levied on the goods and chattels of the party against whom such judgment is given, or on the vessel (except Her Majesty's ships) on account of which such claim may have arisen.

**17.** All penalties imposed by the foregoing sections of this chapter, or hereafter to be imposed by any bye-law made by virtue thereof, may be sued for and recovered before a stipendiary Magistrate or any two of Her Majesty's Justices for the district of St. John's, and shall be levied, with

costs, by warrant of distress of such stipendiary Magistrate or Justices on the goods of the offender; and for want of goods, such Magistrate or Justices shall order such offender to be imprisoned for a term not exceeding one day for every dollar in the said penalties, or until such penalties shall be paid, and one-third of such penalties shall go to the use of the person sueing for the same, and the remainder, together with the fees received for certificates, shall form a fund in the hands of the commissioners to defray the salary of the Secretary and other contingent expenses attending the execution of the provisions of this chapter, and the surplus of such fund, if any, shall be appropriated by them for the benefit of infirm and disabled pilots.

**18.** Whenever the amount of any judgment given by the said commissioners, or of any penalty imposed by the said Justice or Justices, shall exceed twelve dollars, any party feeling himself agrieved may appeal from the judgment of such commissioners or from the conviction of such Justice or Justices to the Supreme Court upon giving sufficient security to prosecute such appeal within a reasonable time and to abide by and perform such judgment or order as may be made thereon.

**19.** The Pilots' Fund, so called, now accrued or hereafter accruing, shall be invested or deposited in the names of the commissioners, subject to the approval of the Governor in Council, and no portion of such fund shall be appropriated except by resolution of the commissioners, approved of by the Governor in Council.

**20.** The master pilots of the boats for the port of St. John's shall, before the fifteenth day of January in every year, make returns up to the thirty-first day of December of the then past year, to the commissioners of pilots, of all moneys earned during the year by the said several pilot boats under their charge; such returns shall show the amount received from each vessel, together with the vessel's name and tonnage, the date when collected, and the total amount collected for the year, and shall be verified by the affidavit of such master pilot before a stipendiary Magistrate or a Justice of the Peace, who is hereby authorised to administer such oath.

**21.** The commissioners of pilots shall, before the thirty-first day of January in each year, make a return to the Governor in Council, for the information of the Legislature, of the amount and conditions of the Pilots' Fund for the preceding year, and of any special matters, including the returns of the master pilots, which they may consider necessary, or which the Governor in Council may require.

**22.** Subject to the approval of the Governor in Council, the Commissioners may make regulations for the relief of superannuated or infirm licensed pilots, out of the pilot fund or otherwise, or of their wives, widows, or children, and may determine what persons from among the licensed pilots, their wives, widows, or children, are and are not respec-

tively entitled to participate in the benefits of existing or future funds, and the terms and conditions upon which, if entitled, they are to be so entitled. No superannuated or infirm licensed pilot, so relieved, shall receive more than two hundred dollars per annum out of the pilot fund.

**23**. Every bye-law made by Commissioners in the exercise of their powers, if and when confirmed by order of the Governor in Council and published as hereinafter mentioned, shall be valid and effectual; and every breach thereof shall be deemed an offence against this chapter.

**24**. Every bye-law made by the Commissioners and confirmed by the Governor in Council, shall be published in the *Royal Gazette*, and a copy thereof printed in the *Royal Gazette* shall be *prima facie* evidence of the original and of the contents thereof and of its having been confirmed by order of the Governor in Council.

# CHAPTER 120.

## Of Harbour Master and Harbour Regulations for the Port of St. John's.

SECTION
1.—Governor in Council may appoint a Harbour Master.
2.—Harbour dues; Proviso: dues not payable oftener than once in every half year.
3.—Harbour Master to give directions as to mooring, &c.
4.—Removal of vessels.
5.—Fairway of Narrows and harbour entrance to be kept clear.
6.—Harbour Master may remove vessels.
SECTION
7.—Appliances to be used by vessels discharging.
8.—Vessels' spars, rigging of, at wharves.
9.—Vessels not lying at wharves to have person in charge, and light.
10.—Vessels in stream to have no line to land.
11.—Ballast, &c., not to be thrown overboard from vessels; penalty.
12.—Nor into waters of harbour; penalty.
13.—General penalty for violation of chapter.
14.—Recovery and appropriation of penalties.
15.—Exception as to private wharves.

**1**. The Governor in Council may appoint, as Harbour Master for the port of St. John's, such person as may be appointed Examiner-in-Chief under title 13, chapter 117, of these Consolidated Statutes, entitled "Of Certificates to Masters and Mates."

**2**. The following amounts, as harbour dues, shall be paid by vessels arriving at the port of St. John's, at the time of their being entered at the Custom House, except ships of war and vessels engaged in the coasting trade and fishing, viz.:

Every vessel of sixty tons and upwards, and not more than one hundred tons, two dollars.

Every vessel of more than one hundred tons, and not more than two hundred tons, three dollars.

Every vessel of more than two hundred tons, and not more than three hundred tons, four dollars.

Every vessel of more than three hundred tons, and not more than four hundred tons, five dollars.

Every vessel of more than four hundred tons, six dollars.

Provided, that no vessel shall be compelled to pay harbour dues more than once in every half year—viz., once between the first day of January and thirtieth day of June, and once between the thirtieth day of June and first day of January.

**3.** In case of any dispute arising relative to the mooring, hauling or removing of vessels in said port, the Harbour Master shall, if called upon, give such directions in respect to the same as the circumstances of the case shall demand; and all persons having the charge or command of such vessels shall comply with the directions of the Harbour Master, under the penalty of twenty dollars for every neglect or refusal so to do.

**4.** The Harbour Master, if called upon, may order the removal of any vessel moored in such a manner or situation as to be unsafe or dangerous to any other vessel.

**5.** The Harbour Master shall direct that the fairway of the Narrows and entrance of the harbour be kept clear for the safe ingress and egress of vessels; and also that the approach to the wharves be kept clear for mail steamers when necessary, and that the usual anchoring ground for ships of war be kept clear and unoccupied upon their arrival and during their sojourn in port; and he may, upon complaint, make such order respecting the mooring or removal of vessels as may be necessary to provide for the free navigation of the port.

**6.** If any vessel shall not be immediately removed by the owner, master, or person in charge, when ordered so to be, the Harbour Master may employ men to remove or assist in removing such vessel as required, or as may be necessary, and the expenses of such removal shall be borne by the vessel or her owners.

**7.** All vessels loading or discharging coals, ballast, stone, gravel, earth, and similar articles, shall have a sufficient piece of canvas or tarpaulin, or be provided with other sufficient appliances, so placed as to prevent the same from falling into the harbour, under the penalty of twenty dollars for every offence, to be paid by the owner, master, or person in charge of such vessel.

**8.** Whenever it shall be made to appear to the Harbour Master that a vessel is lying at any wharf with main spanker or jibboom rigged out, so as to be likely to impede free navigation, he may direct the same to be rigged in; and in the event of non-compliance, all accidents to such vessel shall be at the risk of her owner.

**9.** Any vessel anchored in the said port, and not lying at a wharf, shall have a person on board to take care of her by day and night, and shall have a bright light burning, at least six feet above the upper deck, from sunset to sunrise, unless specially exempted by the Harbour Master.

**10.** No vessel lying in the stream shall have any tow-line, hawser, or be in any way made fast to or connected with any wharf, or to or with the shore, except for the purposes of hauling in or out.

**11.** No ballast, stone, gravel, earth, or rubbish of any kind, shall be thrown overboard from any vessel in the harbour of St John's, or at the entrance thereof, (except in places, if any, set apart for that purpose by the Harbour Master), under a penalty not exceeding fifty dollars for every offence, to be paid by the owner, master or other person having charge of the said vessel.

**12.** No person shall throw any ballast, stone, gravel, earth or rubbish of any kind, into the waters of the said harbour, nor at the entrance thereof, nor deposit the same on the beach thereof below highwater mark, under a penalty not exceeding fifty dollars for every offence, and in default of payment, imprisonment for a period not exceeding sixty days.

**13.** Any person violating any of the provisions of this chapter, or disobeying the lawful commands or directions of the Harbour Master made under this chapter, for which violation no penalty is hereinbefore prescribed, shall be subject to a penalty of twenty dollars.

**14.** All penalties under this chapter, provided for the violation of any of the harbour regulations, or disobedience to the lawful commands or directions of the Harbour Master, shall be recovered, with costs, in a summary manner before a stipendiary magistrate, and shall be appropriated one half to the person giving information of the offence, and one half to the Receiver General for the use of the colony.

**15.** Nothing in this chapter shall apply to vessels lying alongside private wharves, except sections 7, 8, 11 and 12.

# CHAPTER 121.

## Of Outport Pilots and Pilotage.


SECTION

1.—Governor in Council shall have power to cause provisions of chapter to apply to such ports as he may deem expedient.
2.—Two Commissioners shall form a quorum.
3.—Commissioners shall not license pilots unless found fit after due examination.
4.—Certificates shall be revocable at pleasure of Commissioners. Form of certificate.
5.—Certificate to be numbered and registered; penalty for transferring certificate.
6.—Commissioners may establish bye-laws for further regulations.
7.—Commissioners to determine all claims for pilotage.
8.—Concerning rates for pilotage.
9.—Flags shall be used by licensed pilots; penalty for unlicensed person using pilot's flag.
10.—Penalty for taking pilot to sea against his will.
11.—Guidance of vessel to be given to pilot.
12.—Vessels obliged to take pilots; proviso.
13.—Nothing in chapter shall deprive any person acting as pilot of payment. Pilots responsible for improper conduct.
14.—Recovery of penalties.
15.—When penalty over $12, party aggrieved may appeal.


**1.** The Governor in Council shall have power, from time to time, to cause the provisions of this chapter to apply to such of the ports of this colony as he may deem expedient. The ports to which the same shall apply shall be declared by proclamation of the Governor, to be published in the *Royal Gazette,* and the date from which the same shall take effect shall also be stated in such proclamation, and shall be not less than six months from the publication thereof.

**2.** For each of the ports of this colony to which the provisions of this chapter have been or shall be applied as aforesaid, there shall be three Commissioners of Pilots, of whom two shall be a quorum, who shall act gratuitously. The appointment of such Commissioners shall be in the Governor in Council. Every Commissioner shall take the following oath before a Judge or Magistrate :—

"I, A. B., do swear that I will act diligently, faithfully and impartially, in the selection and examinations of pilots for the port of ."

**3.** The Commissioners shall not license any one as a pilot, except on due examination they shall find him a fit person to act in that capacity, and it shall be their province to determine, from time to time, subject to the approval of the Governor in Council, the number of pilots necessary for the requirements of the port.

**4.** The Commissioners shall grant certificates to licensed pilots in the following form, and such certificates shall be revocable at pleasure:

CERTIFICATE.

Port of .....,

Newfoundland.

I, C. D, Chairman of the Board of Commissioners, appointed by law to examine and select pilots for the said port, do hereby certify that E. F., having been examined by the said Board, was deemed a fit person to undertake the pilotage of vessels of every description into and out of the said port, and on the day of , A. D 18 , was, by the said Board, licensed to act in that capacity.

(Signed), C. D, *Chairman.*

*(This license must not be lent or transferred.)*

| Age. | Height. | Complexion. | Color of Hair and Eyes. | Remarks. |
|---|---|---|---|---|
| | | | | |

The annual approval of this certificate must be endorsed.

**5**. Every such certificate shall be numbered and registered in a book kept for that purpose, and shall be annually renewed. No licensed pilot shall lend or transfer his certificate, under a penalty of twenty dollars for a first offence, and for a second offence he shall lose his certificate, and shall not again be licensed.

**6**. The Commissioners may establish bye-laws for the further regulation of pilots and for extra remuneration in cases of an extraordinary nature, and for the adjustment and decision of questions arising between masters of vessels and pilots and others, respecting pilotage, and also respecting the salvage of anchors and cables, and may annex penalties for enforcing the same; but no bye-laws shall be in force until approved of by the Governor in Council.

**7**. The Commissioners may hear and determine all claims for pilotage, salvage of anchors and cables, and remuneration for extraordinary services, in which the pilot is concerned, under the like forms and proceedings used in Magistrates' Courts for the recovery of debts, and the amount of such Commissioners' judgment and the costs incident thereto, to be taxed according to the scale of said Court, shall be levied on the goods and chattels of the party against whom such judgment is given, or on the vessel (except Her Majesty's ships) on account of which such claim may have arisen.

**8**. The rates of pilotage payable by vessels, entering or leaving a port, shall be fixed by the Board of Commissioners thereof, but shall be

subject to the approval of the Governor in Council, and such rates, when so approved, together with a list of exemptions, shall be published in the *Royal Gazette* and at least one other newspaper. Any pilot exacting a larger sum for his services, or taking a less sum than is allowed by said rates, shall forfeit for such offence the sum of eight dollars, and, when he has exacted more, shall refund the excess received by him.

**9.** Every licensed pilot shall carry such flag and have his boat so marked and rigged as shall be directed by the Commissioners, under a penalty of twelve dollars; and every unlicensed person carrying such flag and having his boat so marked and rigged, shall be liable to a penalty of twelve dollars.

**10.** No licensed pilot shall be taken to sea against his will, under a penalty of two hundred dollars on the master of the vessel, except when through stress of weather the same is unavoidable, in which case he shall be entitled to receive from the master or owner of the vessel payment at the rate of sixteen dollars and eighty cents a month for all the time lost, besides the usual meat, drink and a passage home from the first port the ship shall enter, where the same can be obtained.

**11.** Any person taking charge of any vessel as pilot, and not being licensed, shall give up the guidance of said vessel to the first licensed pilot who shall board such vessel outside the limits fixed by the Board of Commissioners.

**12.** All ships and vessels, except Her Majesty's ships, vessels belonging to the Royal Yacht Club, coasting and fishing vessels, which have not been boarded until they have come within the limits fixed by the Commissioners, shall be obliged to take or pay a pilot; and no vessel shall be deemed to be a coasting vessel and exempt from the liability of taking a pilot, unless such vessel shall have been usually employed as a *bona fide* coaster, or if such vessel shall have on board any part of a cargo imported in such vessel from any port or place out of this colony, or if such vessel shall be going to any place out of this colony, or to any outport to load a cargo for any foreign market: Provided that, when in consequence of stormy weather, extreme danger would arise to any boat going outside the limits aforesaid, the Commissioners may award pilotage to any pilot who shall in such case have offered his services within the limits aforesaid, and have been rejected.

**13.** Nothing herein contained shall deprive any person, who may act as pilot in the absence of licensed pilots, from receiving payment for his services, according to the rates fixed as aforesaid, or to relieve any licensed or other pilot from his responsibility to answer for the amount of any loss sustained through his improper conduct in a civil action, at the suit of the party injured.

**14.** All penalties imposed by this chapter, or hereafter to be imposed by any bye-law made by virtue thereof, may be sued for and recovered

before a stipendiary Magistrate or any two of Her Majesty's Justices of the Peace, and shall be levied with costs by warrant of distress of such stipendiary Magistrate or Justices on the goods of the offender; and, for want of goods, such Magistrate or Justices shall order such offender to be imprisoned for a term not exceeding one day for every dollar in the said penalties, or until such penalties shall be paid; and one-half of such penalties shall go to the use of the person sueing for the same, and the remainder to the Receiver General for the use of the colony.

**15.** Whenever the amount of any judgment given by the said Commissioners, or of any penalty imposed by the said Justice or Justices, shall exceed twelve dollars, any party feeling himself aggrieved may appeal from the judgment of such Commissioners, or from the conviction of such Justice or Justices, to the Supreme Court, upon giving sufficient security to prosecute such appeal within a reasonable time, and to abide by and perform such judgment or order as may be made thereon.

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# CHAPTER 122.

## Of Wreck and Salvage.

SECTION
1.—Interpretation.
2.—Governor may appoint commissioners.
3.—Commissioners to be sworn.
4.—Duty of commissioners.
5.—Powers of commissioners.
6.—Plundering wrecked vessel.
7.—Unauthorized persons boarding wreck.
8.—Wreck to be delivered to commissioners; Penalties.
9.—Public notice of wreck.
10.—Sale of wreck.
11.—Unclaimed wreck.
12.—Rights of owner of wreck.
13.—Delivery, payment and discharge of commissioner.
14.—Adjustment of salvage claims.
15.—Offences in respect of wreck.
16.—Prosecutions for receiving; Burden of proof.
17.—Powers of commissioner; May take possession of wrecked property; Penalty for obstruction.
SECTION
18.—Reward to informer.
19.—Salvage; Right to.
20.—Salvage in specie.
21.—Procedure; Disagreement. (1) Under $100, or by consent; Appeal. (2) Over $100; Supreme Court in Saint John's or on Circuit.
22.—Disputes, at whosee instance heard.
23.—Commissioner may seize property sworn to as subject to salvage claims.
24.—Salvage awarded and unpaid; Recovery of.
25.—Salvage to be apportioned when awarded.
26.—Offences against Act; Cumulative remedy.
27.—Proceedings either in *personam* or in *rem*.
28.—Not to affect jurisdiction of Court of Admiralty.
29.—Board of Revenue; Powers.
30.—Compensation to commissioners.
31.—Powers of Superior Court on removal.
32.—Penalties; Recovery.

**1.** In this chapter the word "Commissioner" shall mean a Commissioner of Wrecked Property; the word "master" includes every person having command or charge of a vessel; the word "vessel" includes every description of vessel used in navigation; the word "tackle," used in relation to a vessel, includes all furniture and apparel thereof; the word "goods" includes wares and merchandize of every description; the word "wreck" includes the cargo, stores and tackle of any vessel wrecked,

stranded, or in distress, at any place within the limits of this colony or dependencies, and all parts of the vessel separated therefrom, and any boat, anchor, cable, materials, apparel, or furniture belonging to such vessel, and the property of the ship's company or passengers, and also any goods or chattels, jetsam, flotsam lagan or derelict, or any vessel or boat, or any part of any vessel or boat, or any cable, anchor, tackle, apparel, furniture, stores or materials of any vessel, or any goods, merchandize, or other chattels, which shall be found floating, sunk, or cast ashore within three miles of the coast or shore of this colony or dependencies; "a ship-wrecked person" shall mean any person on board of or belonging to any vessel wrecked, stranded, or in distress.

2. The Governor in Council may appoint and remove Commissioners in this colony and dependencies; may define and assign districts to Commissioners, establish, alter, abolish, and vary districts from time to time, and make and vary regulations from time to time for the conduct of Commissioners and the management of wreck, not repugnant to the provisions of this chapter, which regulations shall be as binding as if the same were embodied in this chapter; and if at any time there be no Commissioner in a district, by reason of non-appointment, temporary absence, or otherwise, the senior Customs' officer residing in or near the district shall act as Commissioner, and he shall for the time being be deemed a Commissioner. In case of the inability, from illness, of the Commissioner or Customs' officer to be present at the locality of a wreck, he may appoint, by writing under his hand, any person to act in his stead, for whose acts he shall be responsible, and who shall have and exercise all the powers and authority of a Commissioner during the time he shall so act. Any person acting under the orders of a Customs' officer acting in pursuance of the provisions of this section, shall, for the purposes of this chapter, be deemed to be acting under the orders of a Commissioner.

3. Commissioners appointed under this chapter shall take an oath of office.

4. Where any British or foreign vessel is wrecked, stranded, or in distress, at any place within the limits of this colony or dependencies, the Commissioner shall, upon being made acquainted with such wreck, stranding or distress, forthwith proceed to such place, and upon his arrival there he shall take the command of all persons present, and shall assign such duties and issue such directions to each person as he thinks fit for the preservation of such vessel, and of the lives of the persons belonging to or on board the same, and of the cargo, stores and tackle thereof, and of the property of such persons. Any person disobeying such directions of the Commissioner shall incur a penalty not exceeding two hundred dollars: Provided always, that nothing in this chapter shall be construed to authorize the Commissioner to take charge of any ship, cargo, or materials, contrary to the expressed wish of the master or owner of such ship or cargo, or of their agents.

**5.** The Commissioner may, with a view to the preservation of the vessel or of the ship-wrecked persons or wreck, do all or any of the following things, that is to say :—

(1.) Require such persons as he thinks necessary to assist him.

(2.) Require the master of any vessel near at hand to give such aid with his men or vessel as may be in his power.

(3.) Demand the use of any boat, waggon, cart, horses, tackle, ropes, or other appliances that may be near at hand.

(4.) Demand and receive from any person in possession thereof, other than the owner or his agent, any wreck; and, should such person refuse to deliver up the same, command as many men of the neighborhood to assist in taking, by force, possession thereof as may be necessary.

Any person refusing, without reasonable cause, to comply with any such requisition or demand so made as aforesaid, shall, for every such refusal, incur a penalty not exceeding twenty dollars.

**6.** Whenever any vessel is wrecked, stranded, or in distress, within the limits of this colony or its dependencies, and any person plunders, creates disorder, or obstructs the preservation of the vessel or of the ship-wrecked persons or wreck, the Commissioner may cause such person to be apprehended and kept in custody until he can conveniently be taken before a stipendiary Magistrate to be dealt with according to law, and may use force for the suppression of any such plundering, disorder, or obstruction, and may command all Her Majesty's subjects to assist him in the use of such force.

**7.** Whenever any vessel is wrecked, stranded, or in distress, within the limits of this colony or its dependencies, any person, not being a Commissioner, or a person acting for or under the orders of a Commissioner, who, without the leave of the master of such vessel or of a Commissioner, endeavours to board the same, may be repelled by force; and the master or Commissioner, and any person under his or their orders, so repelling such person by force are hereby indemnified for so doing.

**8.** Where any person takes possession of wreck within the limits of this colony or dependencies, he shall, as soon as possible, deliver the same to the proper Commissioner: Provided that the Receiver General may, if he thinks fit, dispense with such delivery in the case of wreck upon such conditions, if any, as the said Receiver General may think fit.

Any person taking possession of wreck within the limits of this colony or dependencies, who—

(1.) Fails to deliver the same to the Commissioner in pursuance of this section; or who

(2.) In a case where the Receiver General has dispensed with such delivery, upon any conditions, does not either comply with such conditions or deliver the wreck to such Commissioner as soon as possible,

shall forfeit any claim to salvage, and shall be liable to pay as a penalty double the value of such wreck, and a further sum not exceeding four hundred dollars.

**9.** Every Commissioner shall, within forty-eight hours after taking possession of any wreck, cause to be posted up in the Custom House or other public building nearest to the place where such wreck was found or was seized by him or delivered to him, a description of the same and of any marks by which it is distinguished, and shall also transmit a similar description to the Receiver General, who may give such publicity to the same as he may see fit.

**10.** With respect to the sale of wreck, the following provisions shall have effect, subject to the provisions of section twenty of this chapter, that is to say :

(1.) The Commissioner may, where it is for the advantage of all parties so to do, sell wreck in his custody, and the proceeds of such sale, after defraying the expenses thereof, shall be held by the Commissioner for the same purposes and subject to the same claims, rights and liabilities as the wreck if it had remained unsold.

(2.) Where the owner of any wreck is known, or has established his title to the same, but neglected to satisfy all salvage claims and expenses for twenty days after notice in writing from the Commissioner, the Commissioner may sell such wreck, or a sufficient part thereof, and may, out of the wreck or proceeds thereof, satisfy the salvage claims thereon, and pay all expenses due, and pay or deliver the surplus to the persons entitled to receive the same.

**11.** When three months have elapsed since a wreck came into the possession of a Commissioner without any owner having established a claim to it, such wreck, if unsold, shall, subject to the provisions of section twenty, be sold by such persons, and in such manner as the Receiver General shall direct ; and the proceeds thereof, after payment of expenses, costs, fees and salvage, shall be paid over to the Receiver General, and may, in case of non-payment, be recovered in a suit by the Receiver General from such Commissioner. Such proceeds shall be paid by the Receiver General into the treasury of the colony, therein to remain until the same shall be claimed by the owner thereof, who, on proof of his right thereto, within six years from the time of such sale, before a Judge of the Supreme Court, shall, upon the order of such Judge, receive the amount out of the treasury.

**12.** The owner of any wreck in the possession of the Commissioner, upon establishing his claim thereto to the satisfaction of the Receiver General within three months from the time when such wreck came into the possession of the Commissioner, shall, upon paying the salvage fees, costs and expenses due, or upon giving security to the satisfaction of the Receiver General therefor, be entitled to have such wreck, or in case of a previous sale, the proceeds thereof, delivered up to him or his agent.

And where any such wreck is proved, to the satisfaction of the Receiver General, to belong to a foreign owner, the consul-general of the country to which the owner of such wreck belongs, or any consular officer of that country authorized in that behalf by any treaty or arrangement with such country, shall, in the absence of the owner or his agent, be deemed to be the agent of the owner, so far as relates to the custody and disposal of the wreck.

**13.** Upon delivery of wreck, or payment of the proceeds of wreck, by a Commissioner in pursuance of the provisions of this chapter, such Commissioner shall be discharged from all liability in respect thereof; but such delivery or payment shall not prejudice or affect any question which may be raised by third parties concerning such wreck.

**14.** In any case where any two or more persons claim any wreck or proceeds of what value or amount soever, in the possession of a Commissioner, any Court sitting and having jurisdiction in civil matters to the value or amount of the wreck or proceeds in question in the district of such Commissioner, may, on the application of such Commissioner, or of any such persons, summon such persons before it, and may hear and adjudicate upon their claims, and may make such order between the parties in respect thereof, and of the costs of the proceedings, as to such Court may seem fit; and such order may be enforced in like manner as any order made in any suit brought in the same Court.

### Offences in respect of Wreck.

**15.** Every person who does, within the limits of this colony or its dependencies, any of the acts following, that is to say:

(1.) Prevents or impedes, or endeavors to prevent or impede, the saving of any vessel which is wrecked, stranded, abandoned, or in distress, or prevents or impedes, or endeavors to prevent or impede, any person in his endeavour to save such vessel;

(2.) Steals or maliciously destroys any wreck; or

(3.) Sells any vessel or wreck found within the limits of this colony or dependencies, not having a lawful claim thereto;

(4.) Boards any vessel which is wrecked, stranded, or in distress, against the will of the master, unless the person so boarding is or acts by the command of the Commissioner;

(5.) Assaults any Commissioner, or any person acting as a Commissioner, in the exercise of his duty for the preservation or assistance of any such vessel, or of wreck, or assaults any person acting by command of a Commissioner in the exercise of his duty, as aforesaid;

(6.) Prevents or impedes, or endeavors to prevent or impede, the saving of any wreck;

(7.) Secretes any wreck, or defaces or obliterates the marks thereon, or uses means to disguise the fact that it is wreck, or in any manner conceals the character thereof, or the fact that the same is such wreck, from any person entitled to enquire into the same;

(8.) Receives any wreck, knowing the same to be wreck, from any person other than the owner thereof or the Commissioner, and does not, within forty-eight hours, inform the Commissioner thereof; or

(9.) Offers for sale, or otherwise deals with any wreck, knowing it to be wreck, not having a lawful title to sell or deal with the same; or

(10.) Keeps in his possession any wreck, knowing it to be wreck, without a lawful title to keep the same, for any time longer than the time reasonably necessary for the delivery of the same to the Commissioner;

Shall be deemed guilty of a misdemeanour, on conviction whereof he shall be liable to be imprisoned for any term not exceeding two years, with or without hard labor; or of an offence against this chapter, on summary conviction whereof before a stipendiary Magistrate, he shall be liable to be imprisoned for a period not exceeding six months, or to pay a penalty not exceeding four hundred dollars.

**16.** In any indictment or prosecution for receiving, secreting, disguising, defacing, obliterating marks on, or for the possession of, or for selling or dealing with any wreck, unless the accused shews that he was possessed of the same for more than twelve months before the date of indictment or commencement of the prosecution, it shall lie upon him to show that he did not know and had not the means of knowing the same to be such wreck, or that he was lawfully possessed of or entitled to sell or deal with the same; and in any indictment or prosecution for secreting, defacing, receiving, possessing, selling, dealing with, or concealing the character of any wreck, evidence may be given, either before or after verdict, of any former conviction of the accused for any of the said offences. In any proceeding under this section, the accused may, if he thinks fit, be sworn and examined as an ordinary witness in the case.

**17.** Where a Commissioner suspects that any wreck is secreted or concealed by, or wrongfully in the possession of, any person, he may apply

to any Justice for a search warrant, and such Justice shall have the power to grant such warrant, by virtue whereof it shall be lawful for the Commissioner to enter (and if need be by force) any house, building and place, whether closed or unclosed, and any vessel, and to search for, remove and detain any wreck there kept or secreted; and if any wreck is discovered, and the person in whose possession or on whose premises the same is found, fails, on being summoned to appear before a stipendiary Magistrate, to prove to the satisfaction of such Magistrate that he was lawfully entitled to the possession of such wreck, or was in possession of the same for more than twelve months before being so summoned, he shall be liable to a penalty not exceeding eighty dollars, and for every subsequent offence shall be liable, at the discretion of the Magistrate, either to a penalty not exceeding two hundred dollars or to imprisonment, with hard labour, for any period not exceeding three months: Provided that the Magistrate may, if he thinks fit, commit him for trial for a misdemeanour under this chapter.

**18.** If any such discovery, as aforesaid, is made in consequence of information given to any person by the Commissioner, the informer shall be entitled, by way of salvage, to such sum, not exceeding eighty dollars, as the Commissioner, under instructions from the Receiver General, may allow.

### Salvage.

**19.** Where, within the limits of this colony or dependencies, any vessel is wrecked or stranded, abandoned, or in distress, and services are rendered by any person in saving any wreck, there shall be payable to the salvor, by the owner of such vessel or wreck, as the case may be, a reasonable amount of salvage, including expenses properly incurred.

**20.** In all cases where wreck is divisible, and a party entitled to salvage shall, before a sale shall have taken place, give notice to the owner, master or Commissioner, he shall be entitled to demand and receive, in lieu of all pecuniary compensation, a due proportion of the wreck in specie.

### Procedure in Salvage.

**21.** In case of disagreement as to salvage between parties claiming to be salvors and the owners of wreck in respect of which salvage is claimed, such question shall be heard and determined as follows, and not otherwise, that is to say:—

(1) If the amount claimed does not exceed one hundred dollars, or if in any case the parties consent, in writing, the question shall be heard and determined by the stipendiary Magistrate for the district where the salvage services were rendered, or where the property liable is at the time of making the claim, and his award shall include fees and costs.

If any party feels aggrieved by the award of the Magistrate aforesaid, he may appeal to the Supreme Court, sitting either in St. John's or on the Circuit in which such award was made: Provided always that the appellant shall, within ten days after the cause of appeal has arisen, give notice to the other parties and to the Magistrate of his intention to appeal, and of the grounds thereof, and shall give sufficient security, to the satisfaction of the Magistrate, to prosecute such appeal.

(2.) If the amount claimed shall exceed one hundred dollars, and the parties do not consent, as aforesaid, then such question shall be heard and determined by the Supreme Court, sitting in St. John's or on Circuit, or by a Judge in vacation. And if in any suit or proceeding for salvage, in the Supreme Court, or before a Judge thereof, the claimant recovers an amount less than one hundred dollars, then, unless the Court or Judge certify that such suit or proceeding was unfit to be determined, or could not have been conveniently determined by a Magistrate, the claimant shall have no costs, charges, or expenses incurred by him in the prosecution of his claim, but shall pay to the other party such costs, charges and expenses, if any, as the Court or Judge may direct.

**22.** Any dispute as to salvage may be heard and determined at the instance or upon the application of either the salvor or the owner of the property subject to salvage, or, when the property is in custody of the Commissioner, upon the application or at the instance of such Commissioner.

**23.** A Commissioner may seize any property found within his district, and alleged, by a sworn statement, made before a Justice of the Peace, to be liable for salvage, and may detain such property until the salvage, together with fees and costs due thereon, are ascertained and paid, or process is issued for the arrest or detention thereof by some competent Court, or until sufficient security is given, to be approved of by the Magistrate, Court or Judge.

For the purpose of ascertaining the amount in which security is to be given, the Magistrate, Court or Judge shall appoint two sworn valuators, who shall value such property and deliver to the Magistrate, Court or Judge, and to the parties, a written statement of such valuation.

**24.** If, when salvage has been ascertained and awarded under this chapter, such salvage, together with fees and costs so awarded, is not paid within fourteen days, the Commissioner may sell the property liable for such salvage, fees and costs, or a sufficient part thereof, and out of the proceeds defray the expenses of the sale and the salvage, fees and costs awarded, and shall pay or deliver up the surplus, if any, to the owners of the property or other persons entitled thereto.

**25**. When the salvage is ascertained, it shall be apportioned, without any further suit or proceeding, among the persons entitled thereto by the Magistrate, Court or Judge adjudicating thereupon.

**26**. Any person committing an offence against this chapter, which is also an offence against some other chapter, may be prosecuted, tried, and, if convicted, punished under either chapter; but no person shall be liable to be tried more than once for the same offence.

**27**. The jurisdiction conferred by this chapter on any civil court may be exercised either by proceedings in *rem* or by proceedings in *personam*.

**28**. Nothing in this chapter shall be construed to affect the Admiralty jurisdiction of the Supreme Court in this Colony or dependencies.

**29**. The Board of Revenue may permit all goods saved from any vessel stranded or wrecked within the limits of this Colony or dependencies, to be forwarded to the port of its original destination, or returned to the port at which the same were shipped, taking such security for the proper protection of the revenue, in respect of such goods, as they may think proper.

**30**. There shall be paid to Commissioners, acting in pursuance of this chapter, the expenses and fees following, that is to say :—

(1.) All the expenses properly incurred by them in the performance of their duties.

(2.) For wreck received or taken by the Commissioner into his custody, a percentage of five per cent. on the value thereof: provided that, in no case shall the whole amount for percentage, so payable, exceed one hundred dollars.

(3.) For every sale of wreck conducted by a Commissioner, a sum not exceeding one per cent. on the realized value thereof.

The Commissioner shall, in addition to all other rights and remedies for the recovery of such expenses or fees, have the same rights and remedies as a salvor has in respect of salvage due to him.

The foregoing fees, payable to Commissioners, shall be charged on the wreck.

**31**. If any proceeding under this chapter shall be sought to be set aside by removal into, or appealed from to the Supreme Court or a Judge thereof, the said Court or Judge may confirm the same, notwithstanding the want of form therein, or may correct or amend, or wholly reverse the same, and give final judgment upon the merits.

**32**. All fines, penalties and forfeitures imposed by or incurred under this chapter, not hereinbefore appropriated to any person or for any pur-

pose, shall be paid to the Receiver General for the use of the Colony, and sued for and recovered (where not otherwise provided for) in the Supreme Court in Her Majesty's name.

# TITLE XIV.

## OF THE FISHERIES.

## CHAPTER 123.

### Of the Fisheries' Commission.


SECTION
1.—Respecting appointment of Commissioners; their powers, duties, &c.
2.—Appointment of chairman.
3.—Board authorized to make rules.
4.—Executive Committee.
5.—To have management, &c.
6.—Quorum.
7.—Quarterly meetings.
8.—Special meetings.
9.—Quorum.
10.—Power to employ servants, &c.
11.—Committee to keep record.
12.—Majority vote.
13.—Power to appoint an Inspector.
14.—Inspector to have direction.
15.—Duties of Inspector.
16.—Powers of Commission, &c.
17.—Vote of members relative to rules.
18.—Rules and regulations to be laid on table of both branches of Legislature.
19.—Report also to be laid on table.
20.—Chapter not to affect Treaty rights.


**1.** The Governor in Council may appoint a Board consisting of not less than twenty Commissioners, which Board shall be called a Fisheries' Commission, hereafter called the Commission.

The powers, duties and functions of the said Commission shall be—

To make enquiries and researches upon and in relation to all matters pertaining to the preservation, maintenance, improvement and development of the fisheries, and the trade, commerce and interests of the Colony, so far as the same are connected with or relate to the fisheries and fishery questions.

To devise, organize and maintain such methods of collecting, preserving and diffusing such knowledge and information as they may consider best adapted to the attainment of such objects.

**2.** One of the members of the Commission shall be appointed by the Governor in Council as chairman of the Commission.

**3.** The Commission shall have power to make rules and bye-laws relating to the meetings and business of the Commission, subject to the approval of the Governor in Council.

**4.** There shall be an executive committee of the Board consisting of seven members, of whom the chairman shall be, *ex officio*, one, and the remaining six shall be elected by the members of the Commission at each annual meeting.

**5.** The executive committee shall, subject to the direction signified by the resolutions at general meetings, have the management of the business and affairs of the Commission, except as hereinafter provided.

**6.** Any four members of the executive committee shall be a quorum for the transaction of business.

**7.** There shall be four quarterly meetings of the members of the Commission every year upon such days in the months of January, April, July and October as may be appointed by the executive committee. The general meeting in January shall be the annual meeting.

**8.** Special general meetings of the committee may be held at any time by order of the executive committee.

**9.** At any general meeting of the Commission eleven members present shall form a quorum.

**10.** Upon the recommendation of the Commission the Governor in Council shall have power to employ and appoint such officers as may be necessary for carrying out the work of the said Commission, and upon the recommendation of the Commission the Governor in Council shall, for cause, dismiss any of such officers.

**11** The Commission and executive committee, respectively, shall keep a full and true record of all their proceedings, which shall be subject to confirmation by the Governor in Council.

**12.** At all meetings of the Commission and executive committee a majority of members shall decide. The chairman shall have a vote upon all questions, and in case of a tie shall also have a casting vote.

**13.** The Governor in Council shall have power to appoint an Inspector or Superintendent of Fisheries and of Fish Hatcheries.

**14.** The said Inspector or Superintendent shall, subject to the direction of the Commission, have the superintendence and management of the erection and maintenance of one or more hatcheries for the propagation of cod or other fishes.

**15.** The said Inspector or Superintendent shall perform all such other duties and services as may from time to time be directed by the said Commission in the exercise of their functions.

**16**. The Commission shall have power to make and prescribe rules and regulations in relation to the prosecution of the several fisheries of the Colony; to the fixing of close seasons; to the methods, appliances and contrivances to be used and adopted in and for the taking of fish, and the times, seasons and manner for and in which the same or any of them may be used or adopted, which rules or regulations may apply to such districts or places and for such periods and under such limitations as may therein be stated or defined, and to fix and impose penalties for the violation or non-performance of such rules and regulations and the mode of prosecution therefor, and from time to time to alter and repeal the same.

**17**. The rules and regulations provided for by the preceding sections, and any alterations, amendments, or repeal thereof, shall not be passed or adopted except by a vote of at least eleven members.

**18**. The said rules and regulations, and all alterations and amendments thereof, shall be laid upon the table of both branches of the Legislature, and by resolution of both branches of the Legislature the said rules, regulations or amendments may be confirmed in whole or in part, and when so confirmed shall, upon publication in the *Royal Gazette*, certified by the Colonial Secretary, become law; but any amendments may be adopted by resolutions of both branches of the Legislature and come into force in the same manner as above provided.

**19**. An annual report of the Commission shall be laid on the tables of both branches of the Legislature within ten days after the opening of each session.

**20**. Nothing contained in this chapter, nor in the said rules, regulations, or amendments thereof, made or to be made thereunder, shall be construed to affect the rights and privileges granted by treaty to the subjects of any state or power in amity with Her Majesty.

# CHAPTER 124.

## Of the Coast Fisheries.


SECTION

1.—Herring not to be caught in seines between 20th October and 18th April; Seine, how used. Proviso.
2.—Persons carrying bulk deemed to have caught herring contrary to law.
3.—Power of Justices and others to board vessels.
4.—Time for use of and size of net.
5.—Herring may be taken at any time by Banking vessels for bait.
6.—Penalty for disposing of herring except in prosecution of Bank fishery.
7.—Meaning of Bank fishery.
8.—Injuries to nets and seines.
9.—Bait fishes not to be hauled for exportation between 10th May and 20th October in certain places.
10.—No salmon shall be taken at certain times.
11.—Salmon unlawfully taken forfeited.
12.—No squids shall be taken in seines, &c.
13.—Close time for bait fishes.

SECTION

14.—Manufacture of bait fishes into manure prohibited.
15.—Throwing over offal, &c., on fishing grounds prohibited.
16.—Cod-trap mesh regulated to four inches.
17.—Regulations as to setting, mooring cod-traps, &c
18.—Regulations as to cod-nets, &c.
19.—Further regulations as to cod-traps and cod-nets, &c.
20.—Distance between salmon nets.
21.—Recovery of forfeitures and penalties.
22.—Governor in Council shall appoint superintendent of fisheries.
23.—Use of cod-traps prohibited after 9th May, 1888.
24.—Penalty for violation of section 23.
25.—Penalties in certain cases.
26.—No conviction quashed for informality.
27.—Appeal in certain cases.
28.—Treaty rights of foreign nations reserved.


**1**. No person shall haul, catch or take herrings by or in a seine or other such contrivance, on or near any part of the coast of this colony or its dependencies, or in any of the bays, harbours, or other places therein, at any time between the twentieth day of October in any year, and the eighteenth day of April in the following year, or at any time use a seine or other contrivance for the catching or taking of herring, except by way of shooting and forthwith hauling the same, under a penalty not exceeding two hundred dollars: Provided that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for in-barring or enclosing herrings in a cove, inlet or other place. This section shall not apply to the coast of Labrador.

**2**. The owners, masters, and other persons managing or controlling vessels conveying herrings in bulk, between the twentieth day of October in any year, and the eighteenth day of April in the following year, shall be deemed to have hauled, caught or taken such herrings contrary to the provisions of the preceding section of this chapter, unless such owner, master or other person aforesaid shall make proof to the contrary.

**3**. Any Justice of the Peace, Sub-collector of the Customs, Preventive Officer, Fishery Warden or Constable, may board any vessel suspected of carrying herrings which have been taken contrary to the provisions of section one of this chapter; and in case any such Justice, Sub-collector, Preventive Officer, Fishery Warden or Constable shall make signal to any vessel suspected as aforesaid, from any vessel employed by the Govern-

ment, by dipping the Ensign at the main peak three times and firing a gun, it shall be the duty of the owner, master, or person managing or controlling such vessel so signalled, to heave-to such vessel until such Justice, Sub-collector, Preventive Officer, Fishery Warden or Constable shall have boarded and examined such last-named vessel; and in case of such master, owner, or person managing or controlling as aforesaid, such last-named vessel omitting so to heave her to, or to afford facilities for such Justice, Sub-collector, Preventive Officer, Fishery Warden or Constable to board and examine such vessel, or obstructing such Justice, Sub-collector, Preventive Officer, Fishery Warden or Constable boarding or examining any such vessel, he shall be subject to a penalty of five hundred dollars, to be recovered with costs in a summary manner before a Justice of the Peace, and in case default shall be made in the payment of such penalty, such Justice shall issue his warrant and cause such offender to be imprisoned for a period not exceeding thirty days.

**4.** No person shall, at any time between the twentieth day of December in any year and the first day of April in the following year, use any net to haul, catch or take herrings on or near the coasts of this Colony or its dependencies, or in any bays, harbors or other places therein, having the mokes, meshes or scales of such net less than two inches and three-eighths of an inch at least, or having any false or double bottom of any description; nor shall any person put any net, though of legal size mesh, upon or behind any other net not of such size mesh, for the purpose of catching or taking such herring or herring fry passing a single net of legal size mesh, under a penalty not exceeding two hundred dollars.

**5.** Notwithstanding any of the provisions of this chapter it shall be lawful for the owner of any vessel owned and registered in this Colony, which shall be fully fitted out, supplied and ready to prosecute the Bank fishery, and shall have obtained a Custom's clearance for the said fishery, to haul, catch and take herring at any time and by any means, except by inbarring or enclosing such herring in a cove, inlet or other place, to an extent not exceeding sixty barrels for any one voyage, to be used as bait in prosecuting the said Bank fishery in the said vessel.

**6.** The owner or master of any vessel who shall avail of the preceding section of this chapter, and having procured herring for bait as therein provided, after clearing for the Bank fishery, shall enter any port before the nineteenth day of April thence next following, except compelled by stress of weather, accident, or in case of sickness, or who shall dispose of the herring so taken for bait in any way except for prosecuting the Bank fishery in said vessel, shall be subject to a fine not exceeding two hundred dollars.

**7.** The term "Bank fishery" in this chapter shall be construed to mean a fishery prosecuted at a distance of at least forty miles from the coast of this Colony.

**8.** No person shall wilfully remove, destroy or injure any lawful net or seine, the property of another, set or floating on or near the coast of this Colony or its dependencies, or any of the bays, harbors or other places therein, or remove, let loose, or take any fish from such seine or net.

**9.** No person shall, between the tenth day of May and the twentieth day of October in any year, haul, catch or take herrings or other bait for exportation within one mile measured by the shore or across the water of any settlement situate between Cape Chapeau Rouge and Point Enragee, near Cape Ray, under a penalty of two hundred dollars; and any such person so hauling, catching or taking within the said limits may be examined on oath by a Justice, Officer of Customs, or person commissioned for the purpose, as to whether the herrings or other bait are intended for exportation or otherwise, and, on refusal to answer, or answering untruly, such person shall, on conviction, be subject to a penalty not exceeding two hundred dollars.

**10.** No salmon shall be taken before the first day of May or after the tenth day of September in any year: Provided that if the time limited in this section shall be found to operate injuriously in any part of this Colony, the Governor in Council may appoint any other time or times, and such time or times shall be as binding upon all persons as if specially mentioned herein.

**11.** No person shall buy or sell, or have in his possession, salmon, knowing the same to have been taken contrary to the provisions of this chapter; and every salmon so taken, bought or sold, shall be declared forfeited to the complainant by any Justice.

**12.** No person shall, at any time, haul, catch or take squids, within, or by means of any seine, bunt, or other such contrivances.

**13.** No person shall, between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night, take or catch, in any manner whatever, or by any contrivance whatsoever, any herring, caplin, squid, or any other bait fish, or set or put out any contrivance whatsoever, for the purpose of taking or catching herring, caplin, squid, or other bait fish.

**14.** It shall not be lawful for any person to manufacture into manure or into any article to be used as manure, either by machinery or by artificial chemical process, or by the use of both, any caplin, herring, squid, or other fish used as bait in the prosecution of the fisheries of this Colony and its dependencies. Every person who shall violate the provisions of this section shall be subject to a penalty of five hundred dollars for each offence.

**15.** It shall not be lawful for any person to throw overboard or deposit upon the fishing grounds or ledges, on or near the coasts of this Colony and its dependencies, any heads, entrails, bones or offal of the cod-

fish. Every person who shall violate the provisions of this section shall be subject to a penalty not exceeding two hundred dollars, or, in default of payment thereof, to imprisonment not exceeding sixty days for each offence.

**16.** No person shall, upon the coasts of this Colony or its dependencies, use, for the purpose of taking codfish, any trap, the walls or sides of which consisted at its original construction of meshes less than four inches, and no netting for alterations or repairs of cod-traps shall be less than four inches.

**17.** No cod-trap shall be set on any of the fishing grounds of this Colony or its dependencies at a less distance than eighty fathoms from the nearest point of any cod-trap previously set, nor at a less distance than fifty fathoms from any cod-net previously set: Provided that, if a cod-trap be set out on any of the fishing grounds aforesaid, and subsequently a second trap be set at a greater distance than eighty fathoms therefrom, it shall be lawful for the owner of the third trap to set the same at a distance of at least eighty fathoms of the first trap set out.

**18.** No cod-net shall be set on any of the fishing grounds of this Colony or its dependencies at a less distance than fifty fathoms from the nearest point of any cod-trap or cod-net previously set.

**19.** When any person shall have set a cod-trap, cod-net, or bultow, and the same shall become damaged to an extent rendering it necessary that it be taken up for the purpose of repairs, he shall have the right to re-set his cod-trap, cod-net, or bultow in the place from whence it has been taken up for a period of one week from the time when it was so taken up.

**20.** No net shall be moored or set in any harbor, cove, creek or estuary, or on or near any part of the coast of this Colony or its dependencies, for the purpose of taking salmon, nearer to any other net moored or set for a like purpose than one hundred yards for a single net and three hundred yards for a double net or fleet of nets.

**21.** All forfeitures and penalties imposed by this chapter shall be recovered with costs in a summary manner before any Justice, for which purpose such Justice may summon or arrest the offender, and compel witnesses, by summons or warrant, to appear before him; and, upon conviction of the offender, such Justice shall (except under sections fourteen, fifteen and sixteen) cause all seines, nets and other contrivances illegally used to be sold by public auction; and, in default of the payment of any penalty imposed and costs, such Justice shall issue his warrant and cause such offender to be arrested and imprisoned for any period not exceeding twenty days

**22.** The Governor in Council may appoint the Collector of Revenue for Labrador, or other person, to be Superintendent of the Fisheries on

the coast of this Colony and its dependencies, and may also appoint Fishery Wardens, and prescribe their duties for the purposes of this chapter The compensation for the services of such officers to be provided by the Legislature.

**23**. After two years from the ninth day of May, 1888, it shall be unlawful for any person to use any cod-trap for the purpose of catching or taking any codfish on the coast of this Colony or its dependencies.

**24**. Any person who shall violate the provisions of the next preceding section of this chapter shall be subject to a penalty not exceeding four hundred dollars, to be recovered in a summary manner before a stipendiary Magistrate or Justice of the Peace, and, in default of payment of such penalty, such offender shall be subject to imprisonment for a term not exceeding six months.

**25**. Any person who shall violate any of the provisions of this chapter, for the violation of which no penalty is named, shall be subject to a penalty not exceeding fifty dollars; and all nets and other contrivances used contrary to the provisions of this chapter (except those referred to in sections sixteen, seventeen and eighteen) shall be forfeited, and may be seized by any Justice, Sub-collector of Customs, Preventive Officer, Fishery Warden or Constable, on view or by virtue of a warrant issued by such Justice upon complaint made on oath, and the same may be detained until the trial of the offender, and, upon conviction, the same may be declared forfeited and ordered to be sold by public auction.

**26**. No proceeding or conviction by any Justice of the Peace or other officer under this chapter shall be quashed or set aside for any informality, if the same be substantially in accordance with the intent and meaning of this chapter.

**27**. If any person shall feel himself aggrieved by any order or judgment of a Justice under the first, third, fourth, ninth, fourteenth and twenty-fourth sections of this chapter, he shall have liberty to appeal to the Supreme Court in St. John's or on circuit, upon giving sufficient security for the due performance of such order or judgment, if confirmed, and for the payment of all costs, and to prosecute the said appeal.

**28**. Nothing in this chapter shall affect the rights and privileges granted by treaty to the subjects of any state or power in amity with Her Majesty.

# CHAPTER 125.

## Of Inland Fisheries.


SECTION
1.—Taking trout in inland waters with net or other contrivances unlawful ; Penalty.
2.—No trout, fresh-water or migratory fish to be taken between fifteenth of September and first of December ; Penalty.
3.—Spearing or sweeping with nets prohibited.
4.—Mill-dams, racks, frames, &c., prohibited across any river to a greater extent than one-third of the width.
5.—Saw-dust prohibited from being cast into any river.
6.—Nets, seines, or other contrivances for the capture of salmon or trout, prohibited in rivers. &c., and within certain distances from the mouth of same ; Proviso.
SECTION
7.—Governor in Council may declare the distance to which mouth of river extends.
8.—Salmon found in possession of persons knowing the same to have been unlawfully taken, confiscated.
9.—Justices, Sub-collectors, &c., may destroy any weir or other erection set contrary to this chapter.
10.—No net for taking salmon less than six inches mesh.
11.—Penalty for violating provisions of this chapter.
12.—Recovery of penalties.
13.—Constable or peace officer may arrest on view.


**1.** No person shall, at any time, catch, kill, or take any kind of trout, or other non-migratory fresh-water fish, in any inland lake, river, or stream within this Colony, by the use of any net, bultow, weir, fishing otter, lime or other deleterious compound, under a penalty of not exceeding ten dollars for each offence, and in default of payment, imprisonment for a term of not exceeding ten days.

**2.** No person shall catch, kill, or take any kind of trout, char, whitefish, landlocked salmon, or any fresh-water or migratory fish in any lake, river or stream of this colony, between the fifteenth day of September and the first day of December, in any year, under a penalty of not exceeding ten dollars for each offence, and in default of payment imprisonment for a period not exceeding ten days.

**3.** No person shall, by spearing or sweeping with nets or seines, take, or attempt to take, any salmon, grilse, par or trout, in any bay, river, stream, cove or water-course, above where the tide usually rise and falls, or in any pond or lake.

**4.** No mill-dam, rack, frame, traingate, or other erection or barrier, shall be erected in or across any river, stream, lake or water-course, to a greater distance than one-third of the width of the water, so as to leave the middle third part of the water free for the passage of salmon.

**5.** No saw-dust or mill rubbish shall be cast into any river, stream, lake or water-course.

**6.** No person shall set, or permit to remain set, or to remain in the water, any net or other contrivance whatsoever, for the capture or taking

of salmon or trout, in any river, stream, lake or water-course in this Island, nor shall any person capture or take by means of any seine, net or other such contrivance, any salmon or trout, in any river, stream, lake or water-course in this Island; nor shall any such seine, net or other contrivance be set or moored in any place within two hundred yards from the mouth of any such stream or water-course. Provided that where nets may be set there shall be left free and open a passage of at least two hundred yards in the centre of such stream or water-course.

**7.** It shall be lawful for the Governor in Council to declare by proclamation the points to which the mouth of any such river, stream or water-course extends, and from and after the publication in the *Royal Gazette* of such proclamation, the points therein named shall be deemed to be, and shall be bounds of any river, stream, or water-course, in such proclamation referred to, notwithstanding such bounds may extend beyond low water mark at the mouth of any such river, stream or water-course.

**8.** No person shall buy or sell or have in his possession salmon, knowing the same to have been taken contrary to the provisions of this chapter; and every salmon so taken, bought, or sold, shall be declared forfeited to the complainant by any Justice.

**9.** Any Justice, Sub-Collector, Preventive Officer, fishery warden or constable, may on view, destroy any weir, rack frame, traingate or other erection or barrier, used or erected contrary to the provisions of this chapter, or the same may be destroyed by virtue of a warrant issued by any Justice, Sub-Collector or Preventive Officer, upon complaint made on oath to be administered by either of them.

**10.** No net shall be used for taking salmon in any river, stream, lake, water-course, or estuary of this island, the mokes, meshes, or scales of which shall be less than six inches.

**11.** Any person violating any of the foregoing provisions of this chapter, for which no penalty is specifically provided, shall be subject to a penalty not exceeding fifty dollars, and in default of payment to imprisonment for a period not exceeding one month.

**12.** The penalties under this chapter shall be sued for and recovered in a summary manner before a Justice of the Peace by any person who shall complain of and prosecute the offender to conviction.

**13.** Any constable or peace officer shall on view, arrest any person he may find violating the provisions of this chapter, and bring the offender before any Justice to be further dealt with according to law.

# CHAPTER 126.

## Of the Labrador Fishery.


SECTION
1.—Owners of vessels bringing fishermen to Labrador shall bring them back.
2.—Definition of owner.
3.—Receiver of voyage.
4.—Respecting notice of intention of returning given to fishermen by owner.
5.—In case of loss of vessel.
6.—Fisherman.


**1.** All owners of vessels conveying fishermen to the coasts of Labrador, or to any of the islands adjacent thereto, and all persons receiving the voyage of fishermen so conveyed, shall, at or before the end of the fishing season, convey or cause to be conveyed to the port in this Island, where they reside, or whence they sailed, or as near thereto as may be practicable, all such fishermen as aforesaid; and any person or persons who shall, after the last day of October in any year, carry or convey any fishermen from any part of the coast of Labrador, or the islands adjacent thereto, to any port in this island, shall be deemed to have so carried and conveyed the said fishermen at the request of the owner of the vessel in which said fishermen may have been conveyed to the Labrador, or the islands adjacent thereto, and of the receiver of the voyage as aforesaid, and shall be entitled to receive from the owner of vessel and receiver of voyage or either of them the cost of such conveyance.

**2.** In every case where a vessel shall be *bona fide* hired or chartered by the owner to another person, such person shall, for the purposes of this chapter, be deemed to be the owner of such vessel and become and be liable to the provisions of section one of this chapter, and the true owner shall not be liable to the provisions of this chapter in respect of persons conveyed to Labrador in such vessel.

**3.** The words "receiver of the voyage" shall mean only the current supplier being the receiver of the voyage, and not other persons who may be the *bona fide* purchasers thereof from the planter or fisherman.

**4.** In every case where the owner, under this chapter, shall have given at least ten days' notice to such fishermen as he may have conveyed to Labrador, or to the masters or employers of such fishermen, of his intention to proceed on the voyage homeward, and the fishermen, so notified, refuse or neglect to return or be conveyed homeward, such owner shall not be liable under the provisions of this chapter: Provided that in case any such fishermen shall be subsequently conveyed by any other person from Labrador, or any of the islands adjacent thereto, to any port in this island, the owner or hirer of the vessel, as the case may be, in which such fishermen may have been conveyed to Labrador, or to any of the islands adjacent thereto, shall, to the extent of the freight charged such fishermen by such

owner or hirer, be liable to the said person who may so convey such fishermen from the Labrador, or islands adjacent thereto, to this island.

**5.** In every case where a vessel may be lost upon the Labrador coast, and the owner or hirer of the vessel is unable to provide for the return of the fishermen taken to Labrador by him, such owner shall not be liable beyond twenty-five cents per quintal upon the fish, four dollars per ton upon the oil, and twenty-five cents per barrel upon the herring of such fishermen.

**6.** In this chapter the words "fishermen" or "fisherman" shall be taken to include all or any of the persons, male or female, engaged in any manner whatsoever in the catching, curing, drying, or shipping of fish on the coasts of Labrador or on any of the islands adjacent thereto.

# CHAPTER 127.

## Of the Prosecution of the Seal Fishery.

SECTION
1.—No steamer shall leave port before 6 o'clock, a. m., March 12th.
2.—No seals shall be killed before the 14th March, nor after 20th April.
3.—No steamer shall proceed on a second trip.
4.—Second trip—what.
5.—Penalty.
6.—No Customs' officer shall clear any steamer before March 11.
7.—No action shall be brought after 12 months.
8.—Mode of recovering penalties.
9.—Appeal.

**1.** No steamer shall leave any port of Newfoundland or its dependencies for the prosecution of the seal-fishery before the hour of six o'clock in the forenoon of the twelfth day of March in any year, under a penalty of four thousand dollars, to be recovered from the master, owner or other person on whose account such steamer shall have been sent to such fishery: Provided that, in the event of the said twelfth day of March falling on Sunday, any steamer may leave port for such fishery at any time after four o'clock in the afternoon of the previous day.

**2.** No seals shall be killed by any crew of any steamer, or by any member thereof, before the fourteenth day of March or after the twentieth day of April in any year, nor shall seals so killed be brought into any port of this colony or its dependencies, as aforesaid, in any year, under a penalty of four thousand dollars, to be recovered from the master, owner, or other person on whose account such steamer shall have been sent to such fishery.

**3.** No steamer shall proceed to the seal-fishery from any port of this colony or its dependencies on a second or subsequent trip in any year,

under a penalty of four thousand dollars, to be recovered from the master, owner, or other person on whose account such steamer shall have been sent to such fishery: Provided, that if it be shown to the satisfaction of the Collector, Sub-collector, or other Customs' officer of the port from which said steamer sails, that the steamer has been forced by any accident to return to port during the first trip, she shall not be deemed to have gone upon a second or subsequent trip if she leaves port before the twenty-fifth day of March in any year.

**4.** For the purposes of this chapter, steamers which have been on a first trip shall be deemed to be on a second or subsequent trip if they shall engage, at any time during the year, in killing seals at any place within the jurisdiction of the Supreme Court of Newfoundland after returning from such first trip; and the master and owners shall be liable to the same penalties as provided in the third section of this chapter. Any complaints, upon information under this section, shall be made within three months next after the return of the said steamer to a port of this Island.

**5.** Sealing masters violating any of the preceding sections of this chapter shall be incompetent for two years after conviction for any offence thereunder, to be employed to command steamers at the seal-fishery, or to be cleared at the Custom House as masters of such steamers.

**6.** No officer of Her Majesty's Customs in this colony shall clear any steamer for a sealing voyage before the eleventh day of March in any year: Provided, that in the event of the said eleventh day of March falling on Sunday, such steamer may be cleared on the preceding Saturday.

**7.** No action shall be brought by any person to recover any penalty provided by this chapter, except as provided by the fourth section of this chapter, after twelve months from the time such penalty shall have been incurred.

**8.** All penalties incurred under the preceding sections of this chapter shall be sued for and recovered in a summary manner before a stipendiary Magistrate by any person who shall sue for the same; one-half of such penalty shall go to the person who shall sue for and prosecute the same, and the remainder to the Receiver General for the use of the colony: Provided that if the person so prosecuting under this section, having made the complaint before a stipendiary Magistrate, refuse or neglect to prosecute the same with effect to judgment within three months after making the same complaint, it shall be lawful for any other other person to make a complaint, as required by the same section, and to proceed thereon to conviction as if no other complaint had been made.

**9.** If any person shall feel himself aggrieved by any judgment of a stipendiary Magistrate under this chapter, he shall have liberty to appeal therefrom to the then next sitting of Her Majesty's Supreme Court at

St. John's: Provided that notice of the same shall be given to the Magistrate within twenty-four hours after such judgment shall have been delivered, and within five days thereafter recognizances or other security, with or without sureties at the option of such Magistrate, shall be entered into to prosecute the same without delay, and pay such amount as may be awarded with costs.

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# CHAPTER 128.

## Of the Propagation and Protection of Oysters.

SECTION
1.—Governor may issue grants, &c.
2.—Governor may make rules, regulations, &c.
3.—Oysters not to be taken except under grant, or under rules and regulations.
4.—Oysters not to be destroyed or injured.
5.—Penalties, &c.

**1.** The Governor in Council may issue leases or free grants of any coves, creeks, parts of the coast, lakes, rivers, or banks of this colony, for the purpose of planting therein and propagating oysters, subject to such conditions, rules and regulations as the Governor in Council may promulgate.

**2.** The Governor in Council may also make and promulgate rules and regulations respecting the taking of oysters in any of the coves, creeks, parts of the coast, lakes, rivers, or banks of the colony.

**3.** No person, except the grantee, shall take any oysters from any place for which a lease or grant has been issued under section one of this chapter; nor shall any person take any oysters from any of the coves, creeks, parts of the coast, lakes, rivers, or banks of the colony, except under and subject to the conditions, rules and regulations promulgated under sections one and two of this chapter.

**4.** No person shall injure or destroy any oysters, or wilfully obstruct the growth of any oysters put, placed, or being in any bed or place for propagation, or in any other place in this colony.

**5.** Any person violating any of the provisions of this chapter, or any of the rules or regulations promulgated by the Governor in Council thereunder, shall be liable for every offence to a penalty not exceeding fifty dollars, or to imprisonment for a period not exceeding two months, to be recovered or imposed in a summary manner before a stipendiary Magistrate.

# CHAPTER 129.

## Of the Exportation, Sale, &c., of Bait Fishes.


SECTION
1.—No person shall export, or haul, catch, take, purchase, or have in his possession, any bait fishes for the purpose of exportation.
2.—Licenses may be granted for certain purposes.
3.—Licenses issued under certain authority.
4.—Power of Governor in Council to suspend or limit operation of chapter.
5.—Conditions under which licenses granted.
6.—To whom applications for licenses shall be made.
7.—Licensee shall give bond to Receiver General.
8.—Form of license, bond, &c
9.—Penal clause.
10.—Power of convicting Magistrate to confiscate, &c.
11.—Penalty for violation of chapter.
SECTION
12.—*Onus probandi* upon accused party.
13.—Power to appoint Commissioners conferred upon Governor in Council.
14.—Power to board and search ships or vessels conferred upon certain persons.
15.—Certain persons may be examined on oath by a J. P. and other officials of the Government.
16.—Additional powers given to officials.
17.—What shall be evidence.
18.—Offences may be prosecuted summarily.
19.—Appeal.
20.—Proceedings not to be set aside for want of form.
21.—Interpretation clause.
22.—Treaty rights preserved.
23.—Power of stipendiary Magistrates and officers.


**1.** No person shall—

(1.) Export, or cause or procure to be exported, or assist in the exportation of; or

(2.) Haul, catch, take, or have in his possession, for the purpose of exportation; or

(3.) Purchase or receive in trade or barter, for the purpose of exportation; or

(4.) Take, ship, or put, or haul on board, or assist in taking, shipping, putting, or hauling on board of any ship or vessel for any purpose whatever; or

(5.) Carry or convey on board of any ship or vessel for any purpose whatever,

any herring, caplin, squid, or other bait fishes, from, on, or near any parts of this colony or its dependencies, or from or in any of the bays, harbors, or other places therein, without a license in writing, to be granted and issued as hereinafter provided.

**2.** Licenses may be granted for any of the following purposes, viz.:

(*a.*) To export bait fishes to a foreign country for bait purposes.

(*b.*) To export bait fishes to a foreign country for food or consumption.

(*c.*) To export bait fishes for use for bait purposes in prosecuting deep sea fisheries.

(*d.*) To haul, catch, or take bait fishes for exportation.

(*e.*) To purchase bait fishes for exportation for food or consumption.

(*f.*) To take, ship, or put on board a ship or vessel, or to carry or convey on board a ship or vessel, bait fishes for exportation for food or consumption.

(*g.*) To purchase bait fishes for exportation for bait purposes.

(*h.*) To take, ship, or put on board a ship or vessel, or to carry or convey on board a ship or vessel, bait fishes for exportation for bait purposes.

(*i.*) To take, ship, or put on board a ship or vessel, or to carry or convey on board a ship or vessel, coastwise, to be discharged or landed or transhipped to some other ship or vessel within some port in this Colony.

**3.** No such licenses shall be issued except under the authority of the Governor in Council, and countersigned by the Colonial Secretary.

**4.** The Governor in Council may, from time to time, by proclamation, suspend or limit the operation of this chapter, and the issue of licenses thereunder, in relation to any district or part of this colony, or the coasts thereof, and for such period and in relation to sale or exportation to such places or for such purposes and in such quantities as shall appear expedient, and as shall be declared and defined in the proclamation.

**5.** No license under this chapter shall be granted to any person unless he shall have first made an affidavit before a Sub-collector or Preventive Officer of Customs, or a stipendiary Magistrate, setting forth the following particulars, viz.: the name of the person to whom the license is to be granted; the name of the vessel on board of which it is intended to convey or export bait fishes; the purpose for which such bait fishes are intended to be conveyed or exported, whether for food or consumption, or for bait purposes; the country to which it is intended to export the same, or the place where the fishery is to be prosecuted for which such bait fishes are to be used.

**6.** Applications for licenses under this chapter shall be made to a stipendiary Magistrate or a Customs' officer, who shall require the applicant in each case to make before him an affidavit stating the facts and particulars, as required under section five to be set forth in the license; and it shall be the duty of the said stipendiary Magistrate or Customs' officer to report to the Governor in Council any refusal on the part of the applicant to make such affidavit, or any *bona fide* doubt on the part of such stipendiary Magistrate or Customs' officer of the truth of any of the statements set forth in such affidavit, or of a belief on his part that such license is applied for for the purpose of evading or defeating, or assisting in evading or defeating, the provisions of this chapter. In such case it shall be the duty of such stipendiary Magistrate or other officer to withhold such license and await further instructions.

**7.** In every case in which a license is granted under this chapter, the person to whom the same is granted shall also give bond to the Receiver General of this colony, with two sufficient securities in the sum of not less than one thousand dollars or more than two thousand dollars each, containing the condition that the terms of the license shall in all respects be complied with; and in the case of a license to export to a foreign country, that satisfactory proof of the landing of the cargo in such foreign country will be furnished within a stated period, and the forfeiture of the penal sum under such bond shall be in addition to any other penalty, forfeiture or punishment which may be imposed for the same offence under this chapter.

**8** The forms of the licenses, affidavits and bonds, above provided, shall be prescribed by the Governor in Council.

**9.** Any person who shall violate any of the provisions of section one of this chapter, or any of the sub-sections thereof; or,

(1.) Use, dispose of, or deal with any bait fishes otherwise than in accordance with the terms of the affidavit made upon application for a license, or with the terms of such license; or,

(2.) Make any untrue statement in any affidavit upon application for a license under this chapter; or,

(3,) Obtain a license under this chapter by means of any false statement or misrepresentation, or by the suppression or concealment of any material fact,

shall be liable for every first offence to a penalty not exceeding one thousand dollars or imprisonment for a period not exceeding twelve months

Any person convicted of a second or subsequent offence under this chapter shall, on conviction, be subject to imprisonment with hard labor for a period of not less than twelve months.

**10.** In addition to the punishment prescribed by the foregoing section, the convicting Magistrate may order the confiscation and sale of the herring, caplin, squid or other bait fishes which have been sold, purchased, hauled, taken, conveyed or exported in violation of the provisions of this chapter, or the terms of any license thereunder, or of the boat or vessel on board of which such bait fishes shall be found to have been unlawfully shipped, conveyed or exported, and the forfeiture of any license held by the offender.

**11.** Any person who shall sell any herring, caplin, squid or other bait fishes for the purpose of shipping or putting on board of any ship or vessel, or for the purpose of exportation to any person not holding or producing a license under this chapter, shall be liable to a fine not exceeding five hundred dollars, or to imprisonment not exceeding three months.

**12**. In any prosecution under the next preceding section, the onus of proof that the bait fishes were not intended for shipment or for exportation shall rest upon the party accused: Provided there be proof of a sale under such circumstances as shall be consistent with a reasonable presumption that shipment or exportation was intended.

**13**. The Governor in Council may, from time to time, appoint special commissioners for the purpose of enforcing the provisions of this chapter.

**14**. Any such commissioner, or any Justice of the Peace, Sub-collector, Preventive officer, fishery warden or constable may board and examine and search any boat or vessel suspected of having on board, or of conveying or exporting bait fishes contrary to the provisions of this chapter, or of any license granted thereunder; and in case any such commissioner, Justice of the Peace, Sub-collector, Preventive officer, fishery warden, constable, or the crew of any vessel employed by the Government, shall make a signal by hoisting the International signal B. M. I, meaning "Heave to, I will send a boat," and firing a gun, or by dipping at the main peak three times the flag with the badge of the colony, as prescribed by the Colonial regulations, it shall be the duty of the owner, master or person managing or controlling such vessel to heave to until such commissioner, Justice, Sub-collector, fishery warden or constable shall have boarded and examined such last-named vessel; and in case of such owner, master or person managing or controlling such last-named vessel omitting to heave her to, or obstructing or omitting to afford facilities for such commissioner, Justice, Sub-collector, Preventive officer, fishery warden or constable in boarding and examining such vessel, he shall be subject to a penalty not exceeding five hundred dollars or to imprisonment for a term not exceeding three months. The master of any vessel who shall refuse or unreasonably delay in obeying such signal may be arrested and brought before a stipendiary Magistrate, and his vessel may be seized and held by any such commissioner, Justice, Sub-collector, Preventive officer, fishery warden or constable until an adjudication shall have taken place, upon a complaint under this section.

**15**. Any person found hauling, catching, taking, purchasing, selling, shipping or conveying any bait fishes, or any person having any such fishes in his possession, or the master, owner or crew of any boat or vessel on board of which any bait fishes may be found, may be examined on oath by a Justice of the Peace, Sub-collector, Preventive officer, fishery warden or commissioner, appointed under this chapter, as to the quantity and kind of bait fishes in his possession or on board of such boat or vessel, the purpose for which such bait fishes are intended to be used or as to the place to which such bait fishes are intended to be conveyed or exported, and upon his refusing to answer, or answering untruly, or failing to produce a license under this chapter, or having such license, being found to have violated or failed to comply with the provisions thereof, such Justice, Sub-collector, Preventive officer, fishery warden or commissioner may seize the boat or vessel on board of which such bait fishes shall have been hauled

or caught, or put, kept, shipped, carried, conveyed or exported, or on board of which the same may have been found, her tackle, apparel, furniture and outfit, and the said bait fishes so found as aforesaid, and may hold the same until an adjudication shall have been had, upon a complaint in relation to such alleged offence.

**16.** In any such case as mentioned in the next preceding section, any officer therein authorized to seize any boat or vessel, and any constable or peace officer then present, shall have power, by direction of any such officer authorized as aforesaid, and without any warrant or complaint upon oath, to arrest any person found committing or omitting to do any of the acts for or on account of which such boat or vessel may be seized, and to detain him in custody until an adjudication shall have taken place as before provided.

**17.** In any prosecution under this chapter, the fact of shipping, putting or having bait fishes on board of any boat or vessel, shall be *prima facie* evidence of the same having been so shipped, put, had or conveyed for the purpose of exportation, and the refusal or failure to produce a license upon being called upon so to do, shall be *prima facie* evidence of such bait fishes having been shipped, put, conveyed or exported without a license; and any exportation, or intended exportation of bait fishes shall in the absence of proof to the contrary, be held to be an exportation or intention to export for bait purposes.

**18.** All offenders against the provisions of this chapter may be prosecuted and convicted, and all fines, forfeitures, penalties, orders for confiscation, and other punishments imposed, recovered and made in a summary manner before a stipendiary Magistrate. In the event of the prosecution of an offender who would not be liable to or ordered to pay a fine, then the reasonable expenses of the prosecutor, including a fair amount for his time and labor expended in and about such prosecution shall, on the certificate of the Magistrate who heard the case, be paid to the prosecutor by the Receiver General.

**19.** If any person convicted under this chapter shall feel himself aggrieved by such conviction, he may appeal therefrom to the then next sitting of Her Majesty's Supreme Court holden in or nearest to the place where such conviction shall have been had: Provided notice of such appeal and of the cause and matter thereof be given to the convicting Magistrate, in writing, within seven days next after such conviction, and the party desiring to appeal shall also, within fourteen days after such notice, give and enter into recognizance, with two approved sureties, before the convicting Magistrate, conditioned for the appearance of the person convicted at such next sitting of the Supreme Court on the first day of such sitting, for the prosecution of the appeal with effect and without delay, to abide the judgment of the Court thereon and for the delivery and surrender of any vessel or other property ordered to be confiscated, and to pay such costs as the Court shall award. Any person who shall

be convicted and imprisoned by any such Magistrate for an offence against this chapter, and who shall have given such notice of appeal, and shall have entered into such recognizance with approved sureties, may be discharged from prison, in which case the recognizance shall be further conditioned for the surrender of the convicted party, on the first day of such next sitting of the Supreme Court, to the sheriff of the district in which such appeal may be heard.

**20.** No proceeding or conviction by, or order of any Justice or other officer under this chapter, shall be quashed or set aside for any informality, provided the same shall be substantially in accordance with the intent and meaning of this chapter.

**21.** In this chapter the word "vessel" shall include any boat or ship registered or not registered, jack, skiff, punt or launch, whether propelled by sails, oars or steam.

**22.** Nothing in this chapter shall affect the rights and privileges granted by treaty to the subjects of any state in amity with Her Majesty.

**23.** For the purposes of this chapter all stipendiary Magistrates shall be deemed to be stipendiary Magistrates for the colony, and may exercise the jurisdiction given by this chapter in any part of the colony. All officers engaged in carrying out this chapter, and the masters and crews of all vessels engaged in the said service, may severally be sworn as special constables, and shall, while engaged in carrying out this chapter, have all the powers, authority and protection of police constables.

# TITLE XV.

## OF THE SALE OF INTOXICATING LIQUORS.

## CHAPTER 130.

### Of Licenses for the Sale of Intoxicating Liquors.


SECTION

1.—Construction.
2.—Bavarian beer and Botanic beer intoxicating liquors.
3.—Penalty for sale without license.
4.—Licenses may be granted by magistrates; Proviso on refusal; Magistrates to make rules, &c.
5.—Licenses—wholesale and retail.
6.—Licenses—forms of; Proviso; Licensing days.
7.—Fees on licenses.
8.—Payment of license; Bonds.
9.—Occupier to be licensed.
10.—Registry by Clerk of Peace or Magistrate; Licensed persons—list of.
11.—Wholesale license—less than two gallons not to be sold; not to be drunk on premises; penalty.
12.—Name of licensed party, &c., to be painted over outer door; penalty for non-compliance.
13.—Penalty for exhibiting signs, &c., by persons not licensed.
14.—Penalty for adulteration.
15.—Penalty for possession of adulterations.
16.—Constables may enter, &c., and take samples.
17, 18.—Penalty in case of persons under 16.
19.—Habitual drunkards—Magistrate may prohibit sale to; penalty for supplying after notice.
20.—Sale or pawn of goods for liquor; restitution and penalty.
21.—Recovery or set-off for liquor; securities for, void.
22.—Close of licensed houses; penalty for non-compliance.
23.—Penalty for presence on premises after hours.
24.—Penalty for games, disorderly conduct, sale to drunken persons, &c.
25.—Harboring constables—penalty for.
26.—Power of person licensed; penalty for refusal to quit.

SECTION

27.—Power of Justices to close houses; penalty.
28.—Constables to visit unlicensed houses; penalty for interruption.
29.—Constables to seize liquor of persons selling without license; proceedings thereon.
30.—Indemnity to constable.
31.—Penalty for offences not specified.
32.—License may be granted for short periods.
33.—Liquor not to be carried in fishing or trading vessels; exception; ship's stores; forfeiture; penalty.
34.—Search of boats.
35.—Prosecutions to be commenced within six months; triable under 11 and 12 Vict., Cap. 43, (Imperial); imprisonment.
36.—Nature of proof required.
37.—Use of bottles, &c., or persons drinking or drunk, sufficient *prima facie* case.
38.—Burden of proof; judgment may go notwithstanding variance; proviso for surprise.
39.—Act of wife, &c., presumptively act of husband, &c.
40.—Appeal to Supreme Court; conditions.
41.—Appeal, a stay of proceedings; record to be transmitted; hearing.
42.—Conviction not to be quashed for want of form.
43.—Licenses may be forfeited.
44.—Liability of married women, &c.
45.—Appropriations of fines.
46.—This chapter to apply to Labrador; exceptions.
47.—Granting of licenses for Labrador.
48.—Requisites of application.
49.—Fees.
50.—Selling liquor afloat.
51.—Selling to Esquimaux.
52.—Jurisdiction.

Schedules.


**1.** "Intoxicating Liquors" in this chapter, and the schedules thereto, and all other laws relating to the sale of intoxicating liquors, shall be construed to signify all ale, wines, malt, brewed or spirituous liquors, containing two per cent, or upwards, of alcohol, by volume.

**2.** The articles or beverages known as bavarian beer and botanic beer, are hereby declared to be intoxicating liquors.

**3.** No intoxicating liquor shall be sold, unless by license, under a penalty for a first offence of not less than twenty, nor more than one hundred dollars, and in default of payment to imprisonment for any term not exceeding one month, and for a second or subsequent offence, imprisonment for any term not exceeding six months, with or without hard labour.

**4.** Licenses may be granted by the stipendiary Magistrates to such persons resident within their jurisdiction as shall be approved of by them. Provided, that where a license is refused by such Magistrates, the Governor in Council, on good and sufficient reasons being shewn, may order the said license to be granted. The said Magistrates may make rules respecting the application for and modes of granting licenses in accordance with the provisions of this chapter, and may revoke, alter, and amend the same from time to time, subject to the approval of the Governor in Council, and the same when duly and finally sanctioned by the Governor in Council, and published in the *Royal Gazette*, shall be deemed to be incorporated in and form part of this chapter, and shall have the force and effect of law.

**5.** Licenses shall be of two kinds, wholesale and retail licenses.

**6.** All licenses shall be in the forms in Schedule A. and shall be held on the terms and conditions in such forms mentioned, and shall continue for one year from the date thereof. Provided that whenever, by rules made under the fourth section of this chapter, the magistrate shall fix a certain day or days in the year for the granting of licenses, the licensing magistrate may, in the case of any licenses existing at the time of the making of such rules and expiring before any of the said licensing days, grant to the holder thereof a license, to continue and be in force till the next regular licensing day, at a charge in proportion to the annual charge for such license, and subject in all other respects to the provisions of this chapter in relation to annual licenses.

**7.** The charge for such licenses shall be as follows:—For the wholesale license, one hundred dollars; retail license, not more than seventy dollars nor less than ten dollars. The amount shall be in the discretion of the magistrate granting such retail licenses, and be regulated according to the situation of the licensed premises and their annual value for the purposes of such licenses.

**8.** Every person to whom a retail license shall be granted shall, before receiving the same, pay the license money for one year, and enter into a bond with two approved sureties in the form in Schedule B, which bond shall be prepared by the Clerk of the Peace or by the Magistrate where there shall be no Clerk of the Peace, and when executed shall be filed by the Clerk of the Peace or Magistrate.

**9.** No retail license shall be granted to anyone but the occupier of the premises on which the said intoxicating liquors shall be sold, exposed or offered for sale; but in case of the death or insolvency of the person

licensed, a Magistrate may make such order thereon as shall suit the circumstances of such case.

**10.** The Clerk of the Peace in every district, and where there is no Clerk of the Peace, the Magistrate shall register in a book a list of licenses with the dates thereof, the names, additions and residences of the parties licensed, and a memorandum of the houses or shops for which the licenses are granted, and of the bonds taken, and the license money, and fines and penalties paid; and shall make returns, embracing the foregoing particulars, at the end of each quarter to the Receiver General, and pay to him the amounts collected less the commission to be allowed on the license money, under a penalty of not exceeding one hundred dollars; and the list of persons so licensed, with their places of residence, shall be published half-yearly in the *Royal Gazette*.

**11.** No person holding a wholesale license shall sell, barter, or exchange less than two gallons of intoxicating liquors at any one time, and no part of such intoxicating liquors shall be drunk on the premises where the same shall have been sold; and any person who shall violate the conditions of his said wholesale license, or the provisions of this chapter in respect of such wholesale license, shall forfeit and pay a sum not exceeding one hundred dollars, with the costs, to be recovered and appropriated as hereinafter mentioned.

**12.** Every person holding a retail license shall, within ten days after obtaining the same, cause to be painted in letters publicly visible and legible upon a board to be placed over the outer door of the house or premises in which the said intoxicating liquors are sold by retail, the christian and surname of the person mentioned in such license at full length, together with the words "Licensed to sell ale, wines and spirituous liquors"; and such person shall preserve and keep up such name and words, so painted as aforesaid, during all the time that such person shall continue so licensed; and every person in any respect making default herein shall forfeit and pay for every offence a sum not exceeding twenty-five dollars, and the neglect to do so for every ten days after every conviction, shall be deemed a fresh offence.

**13.** If any person without a retail license shall keep up or exhibit, in, about or near any house, outhouse or building, any sign-board or sign containing any words, or shall show any emblem or sign used or intended or calculated to intimate that any intoxicating liquors are for sale, barter, or traffic therein, or on the premises, the owner or occupier thereof, knowingly or wilfully offending herein, shall be subject to a fine not exceeding fifty dollars.

**14.** Every person who mixes, or causes to be mixed, with any intoxicating liquor sold, or exposed for sale, by him, any deleterious or noxious ingredient, and every person who knowingly sells, keeps or exposes for sale any intoxicating liquor mixed with any such deleterious or noxious

ingredient, shall, on conviction for a first offence under this section, be subject to a fine not exceeding eighty dollars, or imprisonment not exceeding thirty days, with or without hard labour, and the forfeiture of all adulterated liquor in his possession, and of his license, and such person shall thereafter be incapable of again holding a license.

**15.** Any person having possession of any adulterated liquors or deleterious ingredient, unless he can account for the possession of the same to the satisfaction of the Justices, shall be deemed knowingly to have exposed the same for sale, and the inspector of police or other policeman, authorized in writing by a stipendiary Magistrate, may procure samples of liquor on payment or tender of their value and have the same analyzed.

**16.** It shall be lawful for any constable, when authorized in writing by a stipendiary Magistrate, to enter any dwelling-house, shop, store, cellar, ship, vessel, boat, public or private saloon or room, or any place whatsoever and wheresoever where intoxicating liquor is sold or kept for sale, and take therefrom a sample of such liquor not exceeding in quantity one half-pint from any one cask, puncheon, or other vessel, for the purpose of testing or analysis. Any person obstructing any constable acting under the authority of this section shall incur a penalty not exceeding one hundred dollars.

**17.** Any holder of a retail license who shall permit any intoxicating liquors to be drunk on his premises by any person apparently under the age of sixteen years, shall be liable to a penalty not exceeding fifty dollars.

**18.** No holder of a license to sell intoxicating liquors shall sell or deliver any intoxicating liquors to any person apparently under the age of sixteen years, under a penalty of not exceeding fifty dollars.

**19.** When it shall be proved on oath, to the satisfaction of any stipendiary Magistrate, that any person is an habitual drunkard, or is injuring his health by excessive drinking, or neglecting his family, it shall be lawful for the said Magistrate to cause a written or printed notice to be given to all licensed publicans within his jurisdiction, prohibiting all such persons from supplying such habitual drunkard with any intoxicating liquor for any term not exceeding two years; and if any person shall, after the receipt of such notice, supply such habitual drunkard with any intoxicating liquor, the person who so supplies shall be liable to a penalty not exceeding one hundred dollars, or imprisonment for a period not exceeding thirty days.

**20.** If any person holding a license shall purchase from any person wearing apparel, tools, implements of trade or husbandry, fishing gear, household goods or furniture, made up, either by way of sale or barter, directly or indirectly, for intoxicating liquor, or shall receive from any person any goods in pawn, any stipendiary Magistrate, on sufficient proof on oath being made before him of the facts, may issue his warrant for the

restitution of all such property, and for the payment of costs; and, in default thereof, the warrant shall contain such directions, for levy and sale of the offender's goods for the amount of such property so pawned, sold or bartered, and the offender shall also be liable to a penalty not exceeding ten dollars.

**21.** No person shall be allowed to recover or be allowed to set off any charge for intoxicating liquor in any quantity less than one gallon, delivered at one and the same time; and all specialties, bills, notes or agreements, given in whole or in part to secure such charge, shall be void as respects such charges.

**22.** All licensed houses shall be absolutely closed, and no business whatever done therein, and no intoxicating liquor delivered or consumed, between the hours of ten p.m. and six a.m. from the first day of April to the thirty-first day of December, both inclusive; and between the hours of nine p.m. and seven a m from the first day of January to the thirty-first day of March, both inclusive. No intoxicating liquor whatever shall be sold, delivered or consumed in any licensed premises on Sunday, Christmas Day or Good Friday, under a penalty not exceeding forty dollars for the first offence, and not exceeding eighty dollars for any subsequent offence.

**23.** If during any period in which any licensed premises are required to be closed under the provisions of this chapter, any person is found on such premises he shall, unless he satisfies the Court or Justice that he was an inmate, servant or lodger in such premises, or that his presence there was not in contravention of this chapter, be subject to a fine not exceeding ten dollars.

**24.** If any person licensed under this chapter permits drunkenness, or any violent, quarrelsome, riotous, or disorderly conduct to take place on his premises, or sells or delivers intoxicating liquor to any drunken person, or permits any drunken person to consume any intoxicating liquor on his premises, or permits and suffers persons of notoriously bad character to assemble or meet on his premises, or suffers any gambling or any unlawful game to be carried on on his premises, he shall be subject to a penalty not exceeding forty dollars.

**25.** If any licensed person knowingly harbors or knowingly suffers to remain on his premises, any constable during any part of the time appointed for such constable to be on duty, unless for the purpose of keeping or restoring order, or in execution of his duty, or supplies any liquor or refreshment whatever, by way of gift or sale, to any constable on duty, unless by authority of some superior officer of such constable, or bribes, or attempts to bribe, any constable, he shall be subject to a penalty not exceeding eighty dollars.

**26.** Any licensed person may refuse to admit to, and may turn out of, the premises in respect of which his license is granted, any person who

is drunken, violent, quarrelsome, or disorderly, and any person whose presence on his premises would subject him to a penalty under this chapter; and any such person who, upon being requested, in pursuance of this section, by such licensed person, or his agent, or servant, or any constable, to quit such premises, refuses or fails to do so, shall be subject to a penalty not exceeding twenty dollars, and all constables are required, on demand of such licensed publican, his agent or servant, to expel or assist in expelling every such person from such premises, and may use such force as may be required for that purpose.

**27.** Any two justices of the peace, or any stipendiary magistrate, acting for any district or place where any riot or tumult happens or is expected to happen, or where any election may be taking place or is about to take place, may order every licensed person in or near the place where such riot or tumult happens or is expected to happen, or where such election is taking place or is about to take place, to close his premises during any time which the justices or magistrate may order; and any person who keeps open his premises for the sale of intoxicating liquors during any time during which the justices have ordered them to be closed, shall be subject to a penalty not exceeding one hundred dollars; and it shall be lawful for any person, acting by order of such justices or magistrate, to use such force as may be necessary for the purpose of closing such premises.

**28.** All constables or policemen, within their respective districts, may, at such times as they may think fit, visit all unlicensed houses where there shall be reasonable grounds to suspect intoxicating liquors are sold, also the shops and public rooms of persons holding licenses, to see that the several provisions of this chapter are complied with; and they are hereby required and commanded to prosecute all offenders under this chapter, under pain of being dismissed from their respective offices, or of being fined a sum not exceeding fifty dollars; and in case any person or persons keeping licensed or unlicensed public houses or shops or public rooms, or any persons being in or about such shops, rooms, licensed or unlicensed public houses, at the time any constable or policeman may be visiting the same, shall interrupt or assault such constable while in the execution of the provisions of this chapter, or shall refuse or fail to admit such constable demanding to enter, in pursuance of this section, into any premises or place occupied by or under control of such licensed or unlicensed person, or who, having admitted such constable, refuses or fails to allow him to take an account of any intoxicating liquor found therein, or to furnish him with such light or assistance as he may require, shall be subject to a penalty not exceeding forty dollars.

**29.** Any constable who may discover or be aware of the sale of intoxicating liquor by any unlicensed person, shall forthwith seize and remove such liquor found upon the premises of such person, and shall, immediately after such seizure and removal, proceed in manner provided by law for the conviction of the person selling such liquor; and in any

case where there shall be a conviction for the sale of intoxicating liquor by any unlicensed person, the Justice before whom such conviction shall be had may order all intoxicating liquor found upon the premises of such unlicensed person to be, and the same shall thereupon be, confiscated.

**30**. In any case where a constable seizing such liquor shall have, without delay, proceeded for conviction as aforesaid, but the person proceeded against shall not be convicted, and the Justice before whom such proceedings shall be had shall certify that there was a probable cause of seizure, if any action or other suit or prosecution shall be brought to trial against such constable on account of such seizure, and a verdict or judgment shall be given against the defendant, the plaintiff, besides the things seized or the value thereof, shall not be entitled to more than five cents damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined more than one dollar.

**31**. If any person holding a retail license shall be guilty of a violation of any of the provisions of this chapter, or of the terms or conditions of his license, for which a penalty or punishment is not herein provided, he shall be liable to a penalty for every offence not exceeding twenty-five dollars.

**32**. Whenever a stipendiary Magistrate may deem it expedient he may grant a retail license to any person to sell intoxicating liquors for a period not exceeding six consecutive days, and upon such terms as regards payment and hours of closing as the said Magistrate may specify in the said license. The tent, booth, room, or other place where such intoxicating liquor shall be sold under such license shall be deemed to be a licensed premises within the meaning of this chapter, and the person so temporarily licensed shall be subject in all respects, except as to the amount of license fee and hours of closing, to the provisions of this chapter.

**33**. No intoxicating liquors shall be carried in any ship, vessel or boat engaged in any fishing or trading voyage, except vessels engaged on a sealing voyage, beyond such quantity (not exceeding four gallons) as may be *bona fide* required or necessary for ship's stores. All liquors carried on board any ship, vessel or boat, in contravention of this section, shall, on conviction, be forfeited to the Crown, and the master of the said ship, vessel or boat so carrying the same, as well as the owner thereof, or either of them, if cognizant of or consenting thereto, shall be subject to a penalty not exceeding two hundred dollars nor less than fifty dollars.

**34**. All constables are authorized and required to board and search any ship, vessel or boat, if there shall be reasonable ground to suspect that any intoxicating liquor is contrary to law there kept, or secreted, or sold, or kept for purpose of sale. Any person obstructing any constable acting under the authority of this section shall be liable to a penalty not exceeding one hundred dollars.

### Legal Procedure.

**35**. All prosecutions under this chapter for penalties, fines, or forfeitures, shall be commenced within six calendar months after the same shall have been incurred, and shall and may be recovered upon view by a Justice of the Peace, or upon the complaint in writing of any person who may inform and sue for the same; and all such cases shall be tried according to the practice of Justices in summary cases under the Imperial Act 11 and 12 Victoria, chapter 43, except as provided for in this chapter; with the same powers of adjudicating in cases of default, and of compelling the attendance of witnesses, and also a power of distress and sale of the goods and chattels of all persons convicted under this chapter; and if such penalties are not paid immediately, such person so convicted may be committed by the convicting Justice to the nearest gaol for a period not exceeding thirty days.

**36**. In proving the sale or consumption of intoxicating liquor for the purpose of any proceeding, relative to any offence under this chapter, it shall not be necessary to show that any money actually passed, or any intoxicating liquor was actually consumed, if the Court, hearing the case, be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of intoxicating liquor was about to take place; and proof of consumption, or intended consumption, of intoxicating liquor on premises to which a license under this chapter is attached, by some person other than the occupier of, or a servant in, such premises, shall be evidence that such liquor was sold to the person consuming, or being about to consume, or carrying away the same, by or on behalf of the holder of such license.

**37**. Upon the trial of any person for the selling of intoxicating liquor without a license, if it shall be proved that bottles, or decanters, or tumblers, or glasses, or other vessels which are usually employed for holding and using intoxicating liquor, were found in and upon the premises of such accused person, and had been recently used, or that persons were found drinking or drunk on the said premises, this shall be deemed sufficient *prima facie* evidence of violation of the third section of this chapter, and to cause such accused person to account for the purposes for which such articles were on his premises, and to require him to establish his innocence by proof.

**38**. In any proceeding instituted for a breach of the provisions of this chapter, the defendant, if claiming any exemption, exception, proviso, excuse or qualification, may set up the same as a defence, in which case the burden of proof shall be thrown on such defendant, and it shall not be necessary in the summons to specify the particular sort of liquor sold, nor to whom, nor the time when sold; but it shall be sufficient in the summons to charge the party accused with the breach of some section of this chapter; and no judgment shall be withheld on account of variance between proof and summons, if it appears to the satisfaction of the Magistrates or

Court that the defendant was aware of the real cause of complaint; but if the defendant make affidavit that he has been taken by surprise, the Magistrate or Court may grant him further time to make a full defence on the merits, and no judgment shall be set aside for any variance, or from any formal objection.

**39.** Any sale of intoxicating liquor made on the premises of any person by the wife, child or servant of such person, shall be considered presumptively as the act of the husband, parent or master, and shall be punished in the same way as if such sale had been made by such husband, parent or master in person.

**40.** Either party feeling aggrieved by any conviction, judgment or sentence of any Justice under the provisions of this chapter, may appeal to the Supreme Court sitting in St. John's or on Circuit, subject to the following conditions, viz: that the appellant shall give to the said Justice, where the conviction, judgment or sentence is had, made or imposed, in the central district within three days, and if elsewhere within ten days, notice of his intention so to appeal; and shall, within the respective periods aforesaid, enter into recognizance, with two sufficient sureties, before the said Justice, conditioned to appear at the first ensuing sitting of the Supreme Court, either in term or in vacation, and to prosecute such appeal with effect and to abide by the judgment of the said Court thereupon, and to pay such penalty and costs, or perform such other act or comply with such conditions as may be then ordered or imposed.

**41.** Where either party appealing under the authority of this chapter, has given or tendered the security mentioned in the previous section, judgment shall be thereupon stayed until the event of the appeal is certified to such Justice by rule of Court, and the Justice whose adjudication is appealed from, shall forthwith transmit to the clerk of the proper appellate court a full and accurate record, consisting of the depositions, if any, the warrant or summons (as the case may be), the convictions, judgment or sentence, had, made or imposed, and a copy of all the evidence taken in the cause, and a statement of all evidence to the admissibility of which exception has been taken at the hearing, the grounds of objection thereto, and the order thereon, and of all evidence tendered or excluded, and of the exceptions, if any, made thereon. The appellate court shall, on the filing of such record, upon motion of either party, proceed to hear and determine such appeal, and the court may amend, reform, correct, reverse or vary such conviction, judgment or sentence, as may appear just, and to that end may receive further evidence if deemed necessary.

**42** No conviction or order shall be quashed for want of form, and no warrant of commitment shall be held void by reason of any defect therein, provided that there is a valid conviction to maintain such warrant, and it is alleged in the warrant that the party has been convicted.

**43.** In all cases where a person is convicted of a breach of the provisions of this chapter, the Justice before whom such conviction is had

may, in addition to or in substitution for any penalty, declare the license of every such person so convicted to be forfeited.

**44**. Married women and servants concerned in any breach of the provisions of this chapter, shall be liable for the penalty thereto attaching as if they were unmarried women or principals, but the husband or master of the person so offending shall not be liable to be also sued for the same offence; but in case of married women, distress may issue against the property of the husband.

**45**. Every fine and penalty recoverable under this chapter, shall be appropriated in the following manner: one-half to the informer and the other to the Receiver General for the use of the colony.

**46**. The provisions of this chapter are declared, subject as hereinafter provided, to extend and apply to the coast of Labrador, with the exception of the following sections, that is to say: four, five, six, seven and nine.

**47**. Any stipendiary Magistrate within his district may, at any time during the month of May or June in any year, grant a license to any person approved by him, resident within his jurisdiction, to sell intoxicating liquors on the coast of Labrador, which license shall be in force until the end of the then fishing season and no longer.

**48**. Every application for a license shall specify the particular premises upon which the business, in respect of which the license is sought, is to be carried on, and the license issued thereon shall in all cases specificially limit the operation thereof to such described premises, and no license shall be issued authorizing the sale of liquors by the same person in any more than one harbor or place, or for more than one premises in any harbor or place.

**49**. License fees for the coast of Labrador shall be fixed by the licensing Magistrate, and shall not be less than fifty dollars.

**50**. If any person shall be convicted of selling intoxicating liquors upon the coast aforesaid, elsewhere than on shore, he shall incur a penalty of not less than one hundred dollars.

**51**. No intoxicating liquors shall be sold, given, or delivered to any Esquimaux Indian under a penalty of two hundred dollars.

**52**. Any stipendiary Magistrate, anywhere, or any Justice of the Peace upon the coast of Labrador, shall have cognizance of any offence under this chapter.

## SCHEDULE A.

### Form of Wholesale License.

Newfoundland, }
District, S. S. }

License is hereby granted to , of , in the district of , to sell intoxicating liquors in quantities not less than two gallons, but no part thereof shall be consumed on the premises. This license to remain in force until the day of , A. D. 18 , and to be held on the terms and conditions contained in chapter 130 of the Consolidated Statutes (second series), or other Acts which shall be in force during the continuance of this license, respecting such wholesale licenses for the sale of ale, wines and spirituous liquors.

Given under my hands (or my hand) this day of , A D. 18 .

A. B., Stipendiary Magistrate,

C D., Stipendiary Magistrate, for the district.

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Received from the said the sum of dollars, being the amount due for such wholesale license for one year from the day of , A. D. 18 , to day of , A. D. 18 .

St. John's, day of , A. D. 18 .

E. F., Clerk of the Peace (or J. P.)

### Form of Retail License.

Newfoundland, }
District. }

By virtue of the powers vested in us (or in me) under chapter 130 of the Consolidated Statutes (second series), we, two (or I, one) of Her Majesty's stipendiary Magistrates for the said district, do hereby license , of , in the said district, to sell by retail, in the premises now occupied by the said , situate at (here describe particularly the situation of the premises), and not elsewhere, ale, wines, spirituous and malt liquors, for the period of one year from the date hereof; subject, in all respects, to the provisions of the said chapter, or

any Act to be passed during the continuance of this license, and all rules and regulations made thereunder.

Given under our hands (or my hand) at , in the said district, this of , A. D. 18 .

A. B., Stipendiary Magistrate for district.

C. D., Stipendiary Magistrate for district.

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Received from the said the sum of dollars, being the license money for the above retail license for one year from this date.

E F., Clerk of the Peace for district.

or, J. P. for district.

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# CHAPTER 131.

## Of the Prevention of the Sale of Intoxicating Liquors.


SECTION

1.—Majority of electors in districts may make sale of intoxicating liquors unlawful.
2.—One-fifth of the electors may, by petition, demand poll.
3.—Petition void under certain circumstances.
4.—No license to be granted after receipt of petition.
5.—Stipendiary Magistrate to be Returning Officer.
6.—Oath to be taken.
7.—Duty of stipendiary Magistrates.
8.—Elections similar to election of members.
9.—Explanatory clause.
10.—Form of ballot paper.
11.—Direction to electors.

SECTION

12.—Duty of Returning Officer.
13.—Time for taking new poll.
14.—How proclamation repealed and licenses again issued.
15.—Liquors containing two per cent. alcohol by volume, declared to be intoxicant.
16.—Penalty for breach.
17.—Penalty for breach.
18.—Penalty for breach.
19.—Proceeding for recovery of penalties.
20.—Licensees without a proclaimed district not authorized to sell within proclaimed limits.
21.—Sale on board vessels prohibited; penalty.
22.—Respecting fees upon an election.
23.—Title.


**1.** When it shall have been made to appear to his Excellency the Governor in Council in manner hereinafter provided, that a majority of the duly qualified electors of any electoral district enumerated in the next succeeding section of this chapter, or of any town, harbor or settlement in this colony, as defined by the said succeeding section, who shall vote at a poll to be taken as hereinafter specified, have declared themselves to be in favor of a prohibition of the sale of intoxicating liquors in their locality and against the issue of licenses therefor, it shall be lawful for his Excellency the Governor to issue a proclamation in the ordinary form, having embodied therein the simple declaration that such sale of intoxicating liquors and such issue of licenses therefor are by such proclamation pro-

hibited within such electoral district, town, harbour or settlement, under the authority and for the enforcement of this chapter, and subject to the provisions and limitations hereby enacted.

**2.** When a petition shall be presented to the nearest resident stipendiary Magistrate from one-fifth of the electors of—

(1) Any of the following electoral districts:

The district of Ferryland;
The district of St. John's;
The district of Harbor Main;
The district of Port-de-Grave;
The district of Harbor Grace;
The district of Carbonear;
The district of Bay-de-Verde.

(2) Any town, harbor or settlement in this colony, or of any such town, harbor or settlement, and any one or more towns, harbors or settlements adjacent thereto, in any electoral district, not named in the preceding sub-section, the limits or boundaries of which town or towns, harbor or harbors, settlement or settlements, shall be set forth in the said petition,

as in form set forth in Schedules A. and B. to this chapter respectively, or to the like effect, requiring a vote to be taken as to whether or not such proclamation shall be issued with regard to their electoral district, town or towns, harbor or harbors, settlement or settlements, it shall be the duty of such stipendiary Magistrate, upon receipt of such petition, to scrutinize the names of the electors to such petition, and being satisfied that the said electors, whose names are subscribed to the said petition, are duly qualified and registered, and after the person or persons who have witnessed the signatures to the said petition shall have sworn before him, or some other stipendiary Magistrate, that he the said witness, or they the said witnesses, were present and saw the said electors sign the said petition after the same had been read over and explained to them, and after the fees and expenses have been secured to the said stipendiary Magistrate, as hereinafter provided, to certify such petition and transmit the same to His Excellency the Governor in Council, who shall appoint, by public notice in some newspaper within the district, division or locality intended to be affected by the said proclamation, or if there be no newspaper published therein, then in some newspaper as near thereto as may be had, and also by posting up such notices, or copies of the same, at the various polling places within such district, division or locality, such a day in one of the months of October, November, December, January or February next ensuing, as shall be most convenient, and not less than four weeks from the date of such notice, and at a convenient place or places within the said district, division or locality for the taking of the poll to determine whether or not such proclamation shall be issued; said poll to be taken between the hours of eight a. m. and four p. m. of the day so appointed. Should any riot or disturbance take place so as to prevent polling, such poll shall be continued on the next succeeding lawful day.

3. If the said poll shall not take place in one of the months of October, November, December, January or February next after the receipt of the petition by the Governor in Council, the said petition shall be deemed to be void and of no effect.

4. From the time of the receipt by the stipendiary Magistrate of such petition for a poll, no license shall be granted or renewed for a longer period than until the day for taking such poll.

5. On the day appointed for taking the poll such stipendiary Magistrate shall act in the capacity of Returning Officer, unless the Governor shall appoint some other person to act in that capacity; and such officer shall have all the powers for the preservation of the public peace which are by law vested in a Returning Officer at any election of representatives to the House of Assembly.

6. The Returning Officers and Poll Clerks shall subscribe and swear to the oath for the due and proper performance of the duties of their respective offices, according to the form prescribed in the schedule C. to this chapter, before any stipendiary Magistrate, the nearest Justice of the Peace, or a Commissioner of Affidavits, and shall be subject to the same penalties for the neglect or proper discharge of their respective duties as are imposed on similar officers in cases of the election of representatives to the House of Assembly.

7. The said stipendiary Magistrate shall furnish the Returning Officer with a correct list of the qualified electors within the electoral district, or locality for which the poll is to be taken, and such Returning Officer shall, in case of doubt, have the power to administer to voters the oaths as to qualification required in cases of the election of representatives to the House of Assembly.

8. All elections under this chapter shall be held and conducted, as nearly as circumstances will permit, in the same manner and subject to the same regulations, conditions and provisions as are made, prescribed and provided in relation to elections of members of the House of Assembly, and all and singular the powers, duties and functions of the Governor in Council in relation to the election of the House of Assembly shall apply to elections under this chapter, and returning officers, deputy returning officers, poll clerks, magistrates, justices of the peace, constables, and other officers shall have, exercise, perform and discharge all and singular the same powers, rights, duties and privileges in and about, and in relation to such election as are provided in the case of the election of members of the House of Assembly, save and except as the same may be altered by the provisions of this chapter.

9. The expression "duly qualified electors" in this chapter shall mean electors duly qualified at the time of any election under this chapter to vote at the election of a member of the House of Assembly.

**10.** The ballot paper to be used at elections held under this chapter shall be according to the form schedule D. to this chapter.

**11.** Each elector, on receiving his ballot paper, shall forthwith proceed to the compartment of the polling station, set apart for that purpose, and there mark his ballot paper, making a cross on any part of the upper space if he votes in favor of the petition, and in any part of the lower space if he votes against the petition, after which he shall fold up and deposit his ballot paper in the ballot box in the manner required by the provisions of the law in force for the time being, for the election of members of the House of Assembly.

**12.** After the counting of the votes polled at any election held under this chapter, the Returning Officer shall immediately certify the number of votes polled for and against the petition to the Governor in Council, forwarding at the same time the ballot boxes and all papers and documents required by the provisions of the law in force for the time being for the election of members of the House of Assembly, and upon receipt of such certificate, if a majority of the votes polled have been in favor of the prayer of the petition, the Governor in Council shall issue a proclamation in accordance with the provisions of this chapter.

**13.** After a poll has been taken in any electoral district, division of district, or other locality, as hereinbefore defined, no new poll shall be had until after the expiration of three years from the date of the former poll, or from the date of the said proclamation, should the result be in favor thereof; and if no petition for a new poll be signed and forwarded to His Excellency the Governor in Council not less than three months before the expiration of said proclamation, the operation of the said proclamation with reference to such district, division of district, or locality, shall be considered as agreed to by the electors thereof, and shall continue in full operation and effect, without any necessity for the issue of a new proclamation, for three years from the expiry thereof, and so on in like manner shall be continued in operation and effect for every successive period of three years without any necessity for the issuing of a new proclamation until a petition for a new poll be made in the manner hereinbefore provided.

**14.** When a petition shall be presented in the form set forth in the schedules E. and F. respectively, and in the manner prescribed by section two of this chapter, from one-fifth of the duly qualified electors of any district or locality in which a proclamation prohibiting the sale of intoxicating liquors therein shall have been in operation, requiring a vote to be taken as to whether or not such proclamation shall be repealed, the provisions of the said proclamation and of this chapter shall remain and continue in force as provided by section thirteen, unless a majority of the duly qualified electors, who shall vote at an election to be held in pursuance of the said petition, shall declare themselves to be in favor of such petition and of the repeal of the said proclamation

**15.** From the day in which a proclamation shall be issued within any electoral district or locality prohibiting the sale of intoxicating liquors therein, and during the operation of the said proclamation, no person (unless it be for exclusively medicinal or sacramental purposes, or for *bona fide* use in some art, trade or manufacture) shall, within the limits of such electoral district or locality, expose or keep for sale, or directly or indirectly, or by any pretense or device, sell or barter, or in consideration of the purchase of any other property give to any person any intoxicating liquor or liquors, and no new license for the sale of intoxicating liquors shall be granted during the said period. The term "intoxicating liquors" in this chapter shall be construed to signify all ale, wines, malt, brewed or spirituous liquors containing two per cent. or upwards of alcohol by volume.

**16.** If anyone knowingly sells or delivers, or causes to be sold or delivered, any intoxicating liquors for the purpose of sale in any place wherein the sale of intoxicating liquors is illegal, (except for the purposes mentioned in the foregoing section), he shall incur a fine not exceeding four hundred dollars, or, in default of payment, imprisonment not exceeding three months, with or without hard labour.

**17.** Any person who, in the employment or on the premises of another, exposes or keeps for sale, or sells, or barters, or gives any intoxicating liquor or liquors in violation of the preceding section, shall be held equally guilty with the principal and incur the same penalty.

**18.** Any person violating the fifteenth section of this chapter shall be liable to the same penalties as are imposed upon persons selling intoxicating liquors without a license under the existing license laws.

**19.** All penalties under this chapter shall be sued for, imposed, recovered, and appropriated in the same manner, and subject to the same provisions as in cases of violation of the said license laws, and the proceedings for the recovery of such penalties shall be subject to the same provisions with respect to appeal, revocation, or removal by writ of *certiorari*, or otherwise, as in the case of penalties under the said license laws; and all intoxicating liquors found upon the premises of any person convicted of violating this chapter shall be destroyed by order of the convicting Magistrate.

**20.** During the continuance of any proclamation issued under this chapter, with respect to any electoral district, division of district, or locality, no license for the sale of intoxicating liquors in any locality beyond the limits of such electoral district or locality shall be of any avail for the purpose of authorizing the sale of any such liquors within the limits of such electoral district or locality, and any sale of intoxicating liquors within the limits of such electoral district or locality, effected under the assumed authority of such license, shall be deemed to be a violation of the fifteenth section of this chapter, and shall incur the same penalties as a sale of intoxicating liquors without a license.

**21.** From the day in which such proclamation shall be issued within any electoral district or locality, and during the operation of this chapter therein, it shall not be lawful to sell, barter, or give in consideration for any property, any intoxicating liquors, as aforesaid, on board any vessel lying in any harbor within the limits of the said electoral district or locality. Any person so offending shall incur the penalties prescribed in the eighteenth section of this chapter.

**22.** The fees to be paid for poll booths, to returning officers and poll clerks under this chapter, shall be: poll booth, four dollars; returning officer, ten dollars; poll clerk, four dollars; which, with any other expenses incurred under this chapter, shall be paid by the inhabitants of the district or locality demanding a poll, and shall be secured to the stipendiary Magistrate at the time of the presentment of the petition to him and before forwarding thereof to the Governor in Council.

**23.** This chapter may be cited as "The Temperance Act."

## SCHEDULE A.

FORM OF PETITION FOR A POLL FOR AN ELECTORAL DISTRICT.

We, the undersigned electors of the electoral district of , do hereby request that a poll may be taken of the electors of the said district to determine whether or not a proclamation prohibiting the sale of intoxicating liquors and the issue of licenses therefor shall be issued in this district, under the authority and for the enforcement of "The Temperance Act."

## SCHEDULE B.

FORM OF PETITION FOR A POLL FOR TOWNS, HARBORS, SETTLEMENTS, &C.

We, the undersigned electors resident within the limits or boundaries herein set forth, do hereby request that a poll may be taken of the electors resident within the said limits to determine whether or not a proclamation prohibiting the sale of intoxicating liquors and the issue of licenses therefor shall be issued, to apply and be in force within the said boundaries or limits, under the authority and for the enforcement of "The Temperance Act." The boundaries or limits within which it is requested that the said poll shall be taken and the said proclamation applied are as follows; (Here define the boundaries or limits).

## SCHEDULE C.

FORM OF RETURNING OFFICER AND POLL CLERK'S OATH.

I, , do swear that I will honestly, impartially, and without favor to any party, take the polls at the election held under "The Temperance Act," and that I have not directly or indirectly received, nor will I hereafter directly or indirectly receive, any money, gift, reward, promise, contract, or security for money, or other reward, for or in respect of the conduct I shall observe during or at the close of the ensuing poll, save and except such lawful compensation as I shall be entitled to receive in virtue of my appointment and the faithful and just execution of my duty as .

(Deponent's name).

Sworn before , at , this day of , in the presence of .

(Magistrate's name).

## SCHEDULE D.

FORM OF BALLOT PAPER.

Voting on the petition of the electors of , under the provisions of "The Temperance Act."

| | |
|---|---|
| For the Petition | X |
| Against the Petition | X |

N B.—The crosses are for illustration.

## SCHEDULE E.

FORM OF REQUISITION FOR A POLL FOR AN ELECTORAL DISTRICT FOR THE REPEAL OF PROCLAMATION.

We, the undersigned electors of the electoral district of , do hereby request that a poll may be taken of the electors of said district to determine whether or not the proclamation prohibiting the sale of intoxicating liquors now in force in this district, under the authority and for the enforcement of "The Temperance Act," shall be repealed,

### SCHEDULE F.

FORM OF PETITION FOR A POLL FOR TOWNS, HARBORS, SETTLEMENTS, &C., FOR REPEAL OF PROCLAMATION.

We, the undersigned electors, resident within the limits or boundaries hereinafter set forth, do hereby request that a poll may be taken of the electors resident within the said limits to determine whether or not the proclamation prohibiting the sale of intoxicating liquors and the issue of licenses therefor, now in force within the said boundaries or limits, under the authority and for the enforcement of "The Temperance Act," shall be repealed. The boundaries or limits within which it is requested that the said poll shall be taken and the said proclamation applied are as follows: (Here define the boundaries or limits).

## CHAPTER 132.

## Of the Prevention of the bringing of Spirituous Liquors on board of Her Majesty's Ships.

SECTION 1.—Liquors not to be brought on board of Her Majesty's Ships without consent of Commanding Officer; Forfeiture; Penalty.

**1.** It shall not be lawful for any person to bring on board any of Her Majesty's ships or vessels any spirituous or fermented liquor of any description, without the previous consent of the officer commanding the ship or vessel on board of which the same may be brought; and it shall be lawful for an officer in her Majesty's service, or warrant or petty officer of the navy, or non-commissioned officer of marines, with or without seamen or persons under his command, to search any boat or vessel hovering about or approaching, or which may have hovered about or approached any of her Majesty's ships or vessels, and if any spirituous or fermented liquor be found on board such boat or vessel, to seize such spirituous or fermented liquor, and the same shall be forfeited to the Receiver General for the use of the colony; and if any person shall bring any spirituous or fermented liquor on board any of her Majesty's ships or vessels without such previous consent as aforesaid, or shall approach or hover about any of her Majesty's ships or vessels for the purpose of bringing any spirituous or fermented liquor on board the same without such previous consent, or for the purpose of giving or selling without such previous consent spirituous or fermented liquor to men in her Majesty's service, or of aiding or assisting any officer, seaman or marine in her Majesty's service to desert or improperly absent himself from his ship or vessel: every such person shall, upon a summary conviction thereof before a Justice of the Peace, forfeit and pay a sum not exceeding fifty dollars for every such act or offence;

and it shall be lawful for any officer in her Majesty's service, or any such warrant or petty officer, or non-commissioned officer as aforesaid, or for any constable or peace office, with or without any warrant or other process, to apprehend or cause to be apprehended any such offender or person so acting, and to bring him or cause him to be brought before any stipendiary Magistrate or Justice of the Peace for the purpose of having the offender summarily convicted of the same. Any pecuniary forfeiture under this chapter shall and may be recovered with costs before a stipendiary Magistrate or Justice of the Peace; one-half of the forfeiture so recovered shall go to the party who may inform and sue for the same, and the other half to the Receiver General for the use of the colony

# TITLE XVI.

## OF THE DOMESTIC RELATIONS.

## CHAPTER 133.

### Of the Solemnization of Marriage.

SECTION
1.—By whom to be solemnized.
2.—Two creditable witnesses to be present
3.—Where parties are under age, banns to be published, or consent of parents obtained.
4.—All marriages to be registered.
5.—Register to be proof of the due celebration of marriage.
6.—Persons defacing or destroying register, guilty of felony.
7.—Magistrates and other laymen, when duly licensed, authorized to celebrate marriages.
SECTION
8.—Persons celebrating marriages where there is no church or chapel, to transmit a certificate thereof to the Colonial Secretary within twelve months.
9.—Register to be evidence of marriage.
10.—Penalties may be sued for in any Court of Record. Their appropriation.
11, 12.—This chapter to apply to the "Salvation Army" and its officers.
13.—All appointments to be published in the *Royal Gazette*.

**1.** All marriages which may hereafter be solemnized in this colony and dependencies shall be solemnized by persons in holy orders, or by some resident minister publicly recognized as the pastor and teacher of any congregation having a church or chapel, or by persons employed to discharge the duties of teachers or preachers of religion, such teachers or preachers being duly licensed to celebrate marriage by the Governor, except in the cases hereinafter especially excepted and provided for; and any person who shall assume to officiate in the performance of marriage unless authorized under the provisions of this chapter, shall forfeit two hundred dollars.

**2.** No person in holy orders, nor any such preacher or teacher of religion as aforesaid, nor any other person authorized to celebrate marriage by this chapter, shall celebrate or perform marriage between any persons in

this colony or dependencies except in the presence of two creditable witnesses; and if any such person in holy orders, or teacher or preacher of religion as aforesaid, or any other person authorized to celebrate marriage by this chapter, shall hereafter celebrate or perform any marriage except in the presence of two creditable witneeses, he shall be liable to the payment of a fine of two hundred dollars; but the want of such witnesses shall not invalidate the marriage.

**3**. If any person authorized and licensed to perform or celebrate marriage in this colony and dependencies shall so perform or celebrate any marriage between any two persons either of whom shall be under age, without having first duly published the banns thereof on three successive Sundays in some church or chapel, or, where there is no church or chapel, then without causing notice of such intended marriage to be placarded in some conspicuous place of public resort for the space of three weeks immediately preceding the day appointed for the celebration of such proposed marriage, or without having first obtained the consent of the parents or guardians of such person under age, he shall be guilty of a misdemeanor, and shall, on conviction thereof before the Supreme Court of this island, pay such penalty as the said Court shall award, not exceeding the sum of two hundred dollars.

**4**. Every person in holy orders, resident minister, and teacher or preacher of religion as aforesaid, by whom any marriage shall be performed or celebrated in this colony or dependencies, shall, under the penalty of twenty dollars, immediately after the performance or celebration of any such marriage enter in a register or book, to be kept for that purpose in the church or chapel in which he performs divine service, a certificate or record of such marriage, subscribed with his own name, and containing the names and signatures or marks of the parties married, the day and year when and the place where the marriage was performed, and the names and signatures of two credible witnesses present at such marriage, and such register or book shall be kept and remain at such church or chapel, and shall be open to the inspection of any person requiring to consult or examine the same at all convenient hours; and every person in holy orders, resident minister and teacher or preacher of religion licensed as aforesaid, shall make and deliver to any and every person who shall demand the same a copy, attested by him, of any entry or record contained or made in the said book or register of marriage, on payment to him, by the person who shall require such attested copy, of a fee of fifty cents.

**5**. Any such book or register of marriage, or such attested copy as aforesaid, of any entry or record made in any such book or register of marriages, the hand-writing of the attesting minister being duly proved, shall for all purposes be received as sufficient evidence of the due celebration of any marriage in this colony and dependencies, which by such book or register, or by such attested copy, shall appear or purport to have been celebrated; and every such marriage shall, upon the production of every

such book or register, or of such attested copy and proof as aforesaid, be deemed to have been duly performed and celebrated.

6. If any person shall wilfully deface or destroy, or procure to be defaced or destroyed, any book or register of any marriage, or of any part thereof as aforesaid, with intent to avoid, cancel or annul such marriage, such offender shall be guilty of felony.

7. When the residence of any woman about to be married shall be distant ten miles from the residence of the nearest clergyman, or teacher or preacher of religion licensed as aforesaid, any magistrate, being first licensed for that purpose by the Governor, may celebrate such marriage; and if there be no such teacher or preacher of religion, nor any magistrate licensed, as aforesaid, residing within fifteen miles of the woman about to be married, in such case any layman or person, duly licensed for such purpose by the Governor, may celebrate marriage between any persons resident in such place.

8. Every teacher and preacher so licensed, who shall not have a church or chapel in which he performs divine service, and every magistrate or other layman so celebrating any marriage as aforesaid, shall, within twelve months from the time of the celebration of any such marriage, cause a certificate thereof to be registered in the office of the Colonial Secretary under a penalty of twenty dollars; and whenever such certificate of marriage shall be produced and delivered to the Colonial Secretary, duly proved, he shall, within seven days next after the receipt of such certificate, and upon payment or tender to him of twenty cents, enter or cause to be entered a true copy thereof in a public book or register of marriages to be kept by him for that purpose; and such public book or register shall be kept and remain at the office of such secretary, and shall be open to the inspection of any person requiring to consult the same at the usual office hours; and the said secretary shall make and deliver to any person who shall demand the same, upon payment or tender to him of fifty cents, a true copy of any entry made in the said public book or register of marriages, attested by him in the form following, that is to say:

A true copy, extracted from the public register of marriages.

C. D., Secretary.

9. Any such public book or register of marriage in this colony and dependencies, or such attested copy as aforesaid of any entry in any such public book or register of marriages, the hand-writing of the said secretary being duly proved, shall for all purposes be received as sufficient evidence of the due celebration of any marriage in this colony or dependencies, which, by such book or register, or by such attested copy, shall appear or purport to have been celebrated; and every such marriage shall, upon production of such book or register, or of such attested copy and proof as aforesaid, be deemed to have been duly performed and celebrated.

**10.** All fines, forfeitures and penalties imposed by this chapter may be sued for and recovered in the Supreme Court, and one moiety thereof shall be paid to the person who shall inform and sue for the same, and the remaining moiety thereof shall be paid to the Receiver General for the use of the colony. In default of payment the offender may be imprisoned for any period not exceeding six months.

**11.** This chapter, and chapter 28 of these Consolidated Statutes, entitled "Of the Registration of Births, Marriages and Deaths," shall be held to apply to the religious society called "The Salvation Army;" and any duly appointed "Commissioner" or Staff officer of the said society being a man chosen or commissioned by the said society to solemnize marriages, and resident within this colony or its dependencies, and who shall have been duly licensed by the Governor to celebrate marriages in the place in which he may reside, shall have, for the time being, the same authority for that purpose as a person authorized under the first section of this chapter to celebrate marriages.

**12.** All the duties imposed upon and rights given to persons in holy orders, ministers or others by this chapter and the said chapter 28, shall be held to be imposed and given to such "Commissioners" and "Staff officers" aforesaid, being duly licensed as aforesaid, who shall be liable to all fines, penalties and forfeitures imposed by this chapter.

**13.** All appointments made by the Governor for the purposes of this chapter shall be published in the *Royal Gazette*.

# CHAPTER 134.

## Of Masters and Servants.


SECTION
1, 2.—Breach of contract by servant; penalty.
3.—Absence of servant.
4.—Failure of master to perform agreement.
5.—Procedure against master; penalty.
6.—Balance of wages to be paid in cash.
7.—Harbouring servant; penalty.
8.—Sealer refusing to work, &c.; penalty.
9.—Prices of outfits.
10.—Intoxicating liquors not to be charged against wages.
11.—Medicine chest.
SECTION
12.—Sealing agreements, how signed and kept.
13.—Carrying away boats, gear, &c., by fishery servants; penalty.
14.—Procedure.
15.—Apportionment of fine, &c.
16.—Jurisdiction.
17.—Limitation of prosecution.
18.—Application to parties resident beyond jurisdiction.
19.—Recovery of penalties.
20.—Construction and interpretation.


**1.** When any person who shall have entered into a contract or agreement in writing, which shall be signed by both parties or their agents, and of which there shall be two parts so signed, one to be in the possession of the employer and the other to be in the possession of the servant, for the

performance of any duty within the island of Newfoundland and its dependencies, as fisherman, shoreman or shareman, shall fail or refuse to perform such contract or agreement without shewing cause therefor, such as unseaworthiness of vessel, insufficiency of food, absence of suitable accommodation (when food or accommodation is provided by the employer), or a medical certificate that such person is in ill-health, or other good or sufficient excuse, any Justice may, upon complaint on oath of such failure or refusal to perform such contract or agreement being made by such employer or his agent, issue his warrant, and cause such person to be apprehended and brought before him; and such Justice may commit such person to prison for a period not exceeding thirty days, with or without hard labor: Provided that should the employer consent to receive such servant back into his service at any time before the expiration of such sentence, the Magistrate may forthwith discharge such person from custody for the purpose of completing his agreement; but in case of subsequent breach of his contract, the servant shall be liable to be again apprehended and punished in manner aforesaid: Provided further, that such apprehension, imprisonment and discharge, shall not be construed to relieve said servant from liability for advances issued upon or subsequent to the signing of the agreement.

**2.** When any person who shall have entered into a contract or agreement in writing, which shall be signed by both parties or their agents, for the performance of any duty, as fisherman, shareman, or any other kind of service in connection with the Bank-fishery, shall fail or refuse to perform such contract or agreement without shewing cause therefor, such as unseaworthiness of vessel or dories, insufficiency of food, insufficiency of suitable fishing gear, absence of suitable accommodation (when food or accommodation is provided by the employer), or a medical certificate that such person is in ill-health, or other good and sufficient excuse, any Justice may, upon complaint on oath of such failure or refusal to perform such contract or agreement being made by such employer or his agent, issue his warrant, and cause such person to be apprehended and brought before him; and such Justice may commit such person to prison for a period not exceeding sixty days, with or without hard labor: Provided that should the employer consent to receive such servant back into his service at any time before the expiration of such sentence, the Magistrate may forthwith discharge such servant from custody for the purpose of completing his agreement; but in case of subsequent breach of his contract, the servant shall be liable to be again apprehended and punished in manner aforesaid: Provided further, that such apprehension, imprisonment and discharge, shall not be construed to relieve such servant from liability for advances issued upon or subsequent to the signing of the agreement.

**3.** Any fisherman, shareman, shoreman, mechanical or other servant, who shall absent himself from his employer's service without leave, or refuse or neglect to perform his duty without sufficient cause, shall, for every day's absence, refusal or neglect, forfeit and pay to his employer, who may deduct the same from his wages, a sum equal to twice the rate-

able proportion of his wages stated in his agreement in writing, for such time as he shall be absent or refuse or neglect to perform his service, in addition to any special damage and expenses which the employer shall have sustained by reason of such absence, refusal or neglect, and which such employer may also deduct in manner aforesaid.

**4.** Any employer who shall, without reasonable cause, refuse or neglect to pay any fisherman, shareman, or other servant, the amount or balance of his wages within three days after the same shall have been earned and become due, according to his agreement, (the same having been demanded), shall forfeit and pay to such servant the wages current at the time for the number of days for which such wages or balance shall have been unlawfully withheld, in addition to any special damage and expenses which such servant shall sustain by such refusal or neglect, to be recovered before any Court of Record or a Justice.

**5.** Should the employer of any such servant neglect or refuse to perform his part of such contract or agreement, any Justice shall, upon complaint being made upon oath by such servant, issue his summons, and, in default of appearance, cause such employer or agent to be brought before him, and in case such employer or agent shall refuse to perform such contract or agreement, without showing a sufficient cause therefor, such Justice may impose upon such employer a penalty not exceeding twenty dollars, to be levied on the goods and chattels of such employer by warrant of such Justice; and, in case such warrant shall not be satisfied, the said Justice may issue his warrant to apprehend said employer and commit him to prison for a period not exceeding thirty days.

**6.** On the performance of such agreement or contract on the part of the servant, the balance of wages due thereon shall be paid in lawful current money of this colony to the person entitled thereto, any contract or agreement to the contrary notwithstanding.

**7.** If any person shall harbour or employ the servant of another, after notice of his being such servant, any Justice may, upon complaint upon oath, issue his warrant for the apprehension of such harbourer or employer; and, upon conviction, the said Justice shall impose upon such harbourer or employer a penalty of not less than twenty dollars or more than forty dollars, to be levied on the goods and chattels of such harbourer or employer in manner prescribed by the fifth section of this chapter; and, upon failure to recover such penalty the said Justice shall commit the said harbourer or employer to gaol in manner and for the time provided by the said section; and the said Justice may also make an order on such harbourer or employer for the payment by him to the first employer of the wages earned by such servant during the time he was employed by the said harbourer or employer, and which shall be recovered in the same manner and by the same process as is herein prescribed for the recovery of the penalty mentioned in this section, together with costs.

**8**. Any sealer who, by refusing to work, or otherwise without sufficient reason, shall be a party to causing any master of a sealing vessel while at sea to give up the voyage before the time stated in the agreement for its duration and termination, shall, on conviction in a summary manner before any Justice, be imprisoned for a period not exceeding one month.

**9**. All outfits and supplies advanced to any fisherman, shoreman, shareman, or other servant, shall be charged and paid for at the reasonable and current prices for outfits and supplies where the same shall be delivered.

**10**. In case any employer shall, during the service of such person, sell any intoxicating liquor to him, such employer shall not be entitled, in any such case, to deduct out of the wages or earnings of such person any charge or claim such employer may have or make for any liquor sold or delivered to such person at any time during his service; and no person shall recover any sum of money for any intoxicating liquor supplied to any such person during his service.

**11**. Every vessel employed in the seal or Labrador fisheries of this colony shall, before proceeding on any such voyage, be provided with a medicine chest containing a sufficient supply of medicine; and the master of every such vessel shall, on clearing for such voyage, be compelled to produce to the collector or sub-collector a certificate under the hand of some respectable medical practitioner or druggist, of such vessel being provided with a sufficient medicine chest as aforesaid, or otherwise satisfy such collector or sub-collector of the fact.

**12**. In all agreements with sealing crews aforesaid there shall be two parts, respectively signed by the master and the crew; and one part shall remain with the master or owner, and the other part shall be left with any one of the crew who shall be selected by them or a majority of them for that purpose, or shall be posted and kept in some conspicuous part of the ship.

**13**. Any fisherman, shoreman, or other servant engaged in the fisheries of this island or its dependencies, or the partner of any fisherman or planter so engaged, who shall, whether for the purpose of aiding his desertion or otherwise, wrongfully, or contrary to the terms upon which he may have the temporary use of the same, take and carry away, any vessel, boat, sails, oars, nets or other property whatsoever, used in the prosecution of the fishery, from any person engaged in carrying on the fishery, either as a merchant, planter or otherwise, when such taking and carrying away shall not amount to larceny, shall be guilty of a misdemeanor.

**14**. Any person charged with such misdemeanor may be tried and convicted in a summary manner before a stipendiary Magistrate, under the provisions of the Imperial Act 11 and 12 Victoria, chapter forty-three,

entitled "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary convictions and orders," and shall, on conviction, be subject to imprisonment for a period not exceeding six months, or the said Magistrate may impose the alternative punishment of a fine not exceeding one hundred dollars.

**15.** Out of the fine so imposed, the convicting Magistrate may apportion such an amount (either the whole or part of such fine) as shall appear to him, from the evidence, a reasonable compensation to the party aggrieved for the value of the property taken, or for the amount of injury done; and such amount, when received, shall be paid over to the party aggrieved, and shall be a bar to all civil proceedings whatsoever, for the same cause; the remainder of the fine, if any, shall be paid to the Receiver General for the use of the colony.

**16.** For the purpose of giving jurisdiction under this chapter, all offences shall be deemed to have been committed either within the district or dependency whence such taking occurred, or in any district in the island, in which the offender shall be found.

**17.** All prosecutions under the 13th and 14th sections of this chapter, shall be prosecuted within twelve months after the commission of the offence.

**18.** All sharemen, shoremen, and other servants in the fishery, and their supplying merchants, masters, receivers of the voyage, or employers, in all cases where such sharemen, shoremen, or other fishery servants, shall have entered into a written agreement in Newfoundland, to serve in any capacity in the fisheries of Newfoundland, prosecuted or outfitted in whole or in part from the colony, but which may be carried on outside of the territorial limits of the colony and its dependencies, shall be subject to the provisions of the next five preceding sections and all such persons being or coming within the limits of the colony, shall be amenable to all penalties to which they would have been subject if they had been within the colony at the time, in the same manner and subject to the same jurisdiction, as if the employment had been wholly prosecuted in Newfoundland.

**19.** All penalties imposed under this chapter not hereinbefore provided for, shall be paid to the party proceeding for the same, and all proceedings under this chapter shall be prosecuted and conducted in a summary manner, before any one or more Justice or superior Court, and such Justice or Court may compel the attendance of witnesses and the production of all necessary documents.

**20.** In construing this chapter a copy of the agreement shall be deemed to be in the possession of the servant, if in the case of the crew of any vessel, a copy of said agreement shall be posted up in some conspicuous part of the vessel, and be accessible to the notice or knowledge of such

servant. The words "within this colony" shall refer to and be construed to include any contract made within this colony, notwithstanding that the service contracted for is to be performed beyond the jurisdiction in the prosecution of the Bank fishery, or in boats, vessels or ships. The expression "Bank fishery" in this chapter shall be construed to include all fisheries carried on in vessels three miles distant, and over, from any part of the coasts of Newfoundland or Labrador.

# CHAPTER 135.

## Of Minors and Apprentices.

SECTION
1.—Justices may approve of indenture of apprenticeship; effect.
2.—Ill-treatment of apprentice by master, or misconduct of apprentice; penalty.
3.—Maintenance of apprentice after death of master.
4.—Harbouring apprentice; penalty.
5.—Application of penalties.
6.—Right of minors to sue.

**1**. Any Justice shall, upon application made to him, consent to and approve by writing, under his hand, of an indenture of apprenticeship that shall be produced before him: Provided that, upon examination he shall be satisfied of the good moral character and other requisite fitness of the proposed master or mistress; whereupon such indenture shall be as binding upon the master or mistress, apprentice, and all parties concerned, as if such master or mistress, apprentice, or other parties, had been at the time of the execution of such indenture of full age

**2**. If any master or mistress of an indentured apprentice shall misuse or ill-treat his or her apprentice, or if the apprentice shall not do his or her duty, or if either party shall have cause of complaint against the other, any Justice within the town or district where the master or mistress resides shall, upon such complaint being made upon oath before him, cause the parties and their witnesses to be brought before him by summons or warrant, and if, upon enquiry into such complaint, default shall be found in the master or mistress, such Justice may either impose a fine upon him or her not exceeding five dollars, to be levied by distress and sale of the offender's goods and chattels, or discharge such apprentice from his apprenticeship, upon which discharge being made in writing under the hand of such Justice, the indenture shall be void; and if default shall be found in the apprentice, such Justice shall order such abatement to be made out of his or her wages or allowance, or cause the apprentice (if a male) to be imprisoned, with or without hard labor, for any period not exceeding ten days; and, in addition to such abatement or imprisonment, such Justice may discharge the apprentice by writing under his hand, whereupon the indenture shall be void.

3. Nothing in any indenture of apprenticeship shall be of any force or effect to require the executor or administrator of a deceased master or mistress to keep or maintain the apprentice more than one month after the death of such master or mistress, and at the expiration of such month the indenture shall be void.

4. Any person harbouring an indentured apprentice after notice, shall be liable to a penalty not exceeding fifty dollars, to be recovered before any Justice in a summary proceeding, and by levy under his warrant of the offender's goods and chattels, and, if such warrant shall not be satisfied, the Justice may commit such offender to gaol for any period not exceeding twenty days.

5. All penalties imposed under this chapter shall be paid to the party making the complaint, or on whose behalf the same shall have been made.

6. Infants may bring actions in all Courts in their own names without *prochein amy* for recovery of wages or claims arising out of contracts of service or for any claim under the common indebitatus counts, and shall be subject to such and the like proceedings for the recovery of costs and otherwise as if of the full age of twenty-one years.

# TITLE XVII.

## OF THE POOR.

## CHAPTER 136.

### Of Deserted Wives, Children and Parents.

SECTION
1.—Justices may apprehend any husband, &c., abandoning his wife, &c., and order security for maintenance.
2.—Appropriation of property, &c., for the support of party destitute.
3.—Justice may compel the attendance of witnesses.
4.—Meaning of terms in this chapter.
5.—Husband dissipating his property may be summoned by Justices.
6.—Order affecting landed property to be registered.
7.—Assignments to defeat chapter void.

1. Whenever a complaint on oath shall be made by a commissioner of the poor, or any other person, before any stipendiary Justice that any husband has left destitute, abandoned or deserted, or is about to leave destitute, abandon or desert his wife; that any parent has left destitute, abandoned or deserted, or is about to leave destitute, abandon or desert his infant child; or that any child has left destitute, abandoned or deserted,

or is about to leave destitute, abandon or desert his aged or infirm parent, the person so left destitute, abandoned or deserted, or about to be left destitute, abandoned or deserted, being destitute of the means of support and likely to become a burden on the colony, and the party so leaving destitute, abandoning or deserting, or about to leave destitute, abandon or desert, having the means or ability to maintain such wife, child or parent, aforesaid, such Justice may, by summons or by warrant, cause the party so charged to be brought before him, and thereupon, if upon enquiry such complaint shall be sustained, such Justice may require the party charged as aforesaid to give security by bond to the stipendiary commissioner of the poor at St. John's and his successors in office, for the support and maintenance of the person in relation to whom the charge is made; and, in default of such order being forthwith obeyed, may sentence the party charged to imprisonment, with or without hard labour, for any period not exceeding thirty days: Provided that, if after committal the party charged shall give such security, he shall be forthwith discharged; and every subsequent month's abandonment or desertion as aforesaid, shall be deemed a repetition of the first offence.

**2.** In any case where, upon any such complaint, it shall be made to appear upon such enquiry, and whether the party charged shall have been brought before such Justice or not, that the party charged has any property or money within the jurisdiction of the said Justice, or that he is in the receipt of any salary, allowance, pension or wages, such Justice may, if such order aforesaid be disobeyed, or cannot be made by reason of the party charged not being brought before such Justice, make an order directing the appropriation of so much of such money or property as may be necessary, or the payment of a reasonable proportion of such salary, allowance, pension, or wages, towards the maintenance and support, from time to time, of the party the subject of such order; and such order shall be binding and obligatory upon all persons having notice thereof; and every employer or other person having the payment of such money, salary, allowance, pension, or wages, shall conform to and obey the same, and in default of conformity and obedience thereto, may be compelled to pay the amount from time to time payable thereunder, with costs, in an action of debt to be brought and determined in a summary manner, in the name of the stipendiary poor commissioner at St. John's, before any stipendiary Justice.

**3.** The Justice may, for the purpose of such inquiry, compel the appearance by summons, and, if necessary, by warrant, of any third person, and examine such person upon oath as to any such money, property, allowance, pension, or wages aforesaid.

**4.** The term "parent" in the preceding sections shall include a grandparent, and the term "child" a grand-child.

**5.** Upon complaint on oath being made before any stipendiary Justice that any husband or father having property is by habits of drunkenness

dissipating his property, so as to expose his wife or children to the danger of destitution, such Justice may summon such husband or father before him, and inquire into the matter of such complaint, and if upon inquiry the same shall appear to be well founded, may make an order requiring such husband or father to give security to the stipendiary commissioner of the poor at St. John's, and his successors in office, for the maintenance of his family, and, in default of such order being obeyed, may commit the offender to prison until he shall conform to such order or be discharged by due course of law. And the said Justice, where such security as aforesaid shall not be given, may, in lieu of committing such offender to prison, order that so much of the property of such offender as may be necessary be taken and applied to the maintenance of his family; and such last-mentioned order shall be carried into effect under the direction of the stipendiary poor commissioner, and shall be a justification in law for his proceedings thereunder; and the provisions of the second and third sections of this chapter shall be applicable to the object of this section.

6. Every such order made by a stipendiary Justice, affecting landed property, shall be registered in the registry of deeds for the district where such land may be situated; and, from the time of such order being deposited for registration, shall have the effect of a conveyance of such land by the owner thereof for the purposes of such order: Provided that any stipendiary Justice of the district aforesaid may rescind any such order upon receiving such security as to him may appear sufficient, and also in cases in which it may not be deemed necessary longer to continue the operation of such order.

7. All deeds, assignments and conveyances of any lands or other property made, done or executed with the intent and purpose of defeating any attachment made in pursuance of this chapter shall be, and the same are hereby declared void, except in the case of a *bona fide* purchaser or grantee, for a valuable consideration, who shall not have been aware of or a party to such intent and purpose.

# CHAPTER 137.

## Of the Disembarking of Paupers.

SECTION 1.—Master of vessel landing paupers, &c., in this colony liable to fine.

**1.** Any master of a vessel or other person who shall disembark in any place in this colony or its dependencies any person who, at the time of such landing, shall from sickness, age, infirmity, or want of means of support become, or be likely to become, chargeable to the colony, shall be subject to a penalty of one hundred dollars, to be recovered in a summary manner with costs before a stipendiary Justice, in an action to be brought in the name of and by the stipendiary commissioner of the poor, and paid over to the Receiver General for the use of the colony; and in default of payment, such master or other person may be imprisoned for a period not exceeding three months. No conviction under this chapter shall be removable by *certiorari* or otherwise.

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# CHAPTER 138.

## Of Illegitimate Children.


SECTION
1.—Proceedings on complaint of a woman against person having gotten her with child.
2.—Provisions of second section of chapter 136 to apply to first section.
3.—Party charged may relieve himself by payment of $100.
4.—Mothers refusing to support their illegitimate children may be imprisoned.
5.—Continued refusal to support construed a new offence.
6.—Appeal in case of affiliation.
7.—Punishment on false charge.
8.—Commissioners of poor to control management of children supported by the colony.


**1.** Whenever a complaint, on oath, shall be made before any Justice by any woman charging any person with having gotten her with child, which child is likely to be born a bastard and become chargeable to the colony; and whenever a complaint on oath shall be made by any person charging any other person with being the father of an illegitimate child, chargeable or likely to become chargeable to the colony, such Justice shall issue his warrant and cause the party charged to be brought before him; and if upon enquiry such charge shall be sustained, and it shall not appear that the mother of the child was a common prostitute, such Justice shall make an order affiliating such child upon the party charged, and requiring security by bond to the stipendiary commissioner of the poor at St. John's, and his successors in office, to be given for the support and maintenance

of such child until it shall have arrived at the age of ten years, or shall die or be satisfactorily provided for; and in case such order shall not be forthwith obeyed, such Justice may sentence the party charged to imprisonment in the common gaol, with hard labor, for any period not exceeding six months: Provided that if after committal the party charged shall give such security, he shall be forthwith discharged; and where the Judge shall deem it reasonable in the case of a child not already born, final order upon the charge may be postponed until after the birth of the child, the party charged giving security to abide any order to be made against him.

**2.** The provisions and proceedings mentioned and contained in the second and third sections of chapter 136 of these Consolidated Statutes, entitled "Of Deserted Wives, Children and Parents," shall be applicable and may be put in force and carried out in all cases coming within the operation of the first section of this chapter.

**3.** Any person upon whom an order of affiliation shall have been made as aforesaid, may relieve himself from all obligation thereunder by the payment to such Justice, for the Receiver General of the colony, of the sum of one hundred dollars.

**4.** Every mother of an illegitimate child who, having the ability to labour or any means of supporting it, shall neglect or refuse to support and maintain such child, or shall abandon, desert, or leave it in any place, shall, upon conviction in a summary manner before any Justice, be subject and liable and may be sentenced to imprisonment, with or without hard labour, in the common gaol, for any period not exceeding six months; and such Justice may, upon complaint on oath being made before him of the commission by any woman of such offence, issue his warrant for her apprehension, in order to a conviction for the same.

**5.** The continued neglect or refusal to support and maintain such child by its mother, for any subsequent month after a first conviction for such offence, shall be held and deemed to be a new offence, and shall be dealt with and punished in manner hereinbefore provided with respect to a first offence.

**6.** Any person charged by any woman or other person with being the father of an illegitimate child, and being convicted thereof by a Justice, may, upon giving security to abide the final determination of the case and to pay the costs thereof if finally convicted, appeal from the order of affiliation to the Court of General Quarter Sessions for the district, before whom the matter in issue shall be determined by the jury in attendance for the trial of other matters: Provided, that if upon such trial it shall be satisfactorily proven that the mother of the child was a common prostitute, and the jury shall find such fact, such finding shall be equivalent to a finding of not guilty on the main charge.

**7.** If any mother of an illegitimate child or any other person shall falsely and fraudulently charge any person with being the father of such

child, such mother or other person, upon conviction of such offence in a summary manner before any stipendiary Justice, shall be sentenced to imprisonment in the common gaol, with hard labor, for any period not exceeding six months.

**8.** The stipendiary commissioner of the poor shall have the control and management of the illegitimate children supported by the colony, and apprentice them when of competent age, or otherwise provide for them.

# TITLE XVIII.

## OF THE PRESERVATION OF ANIMALS AND CROPS.

## CHAPTER 139.

### Of the Prevention of Cattle Disease.

SECTION
1.—Governor to make rules to prevent introduction of cattle disease.
SECTION
2.—Governor may issue orders, &c.
3.—Penalty on violation of orders.

**1.** The Governor in Council may make rules and regulations for preventing the introduction or spreading of any contagious or infectious disease among horses, cattle, pigs and sheep in this colony, such rules to be promulgated and published in the *Royal Gazette*.

**2.** The Governor in Council may issue orders to the Receiver General, or other proper officer of Her Majesty's Customs, to prevent the landing, in any port or place in this colony, of horses, cattle, pigs, or sheep, having any contagious or infectious disease, and to order the immediate removal, and, if necessary, the destruction of the same.

**3.** Any person who shall infringe or violate any rule or order made by the Governor in Council in pursuance of this chapter, shall forfeit and pay, for each offence, a sum not exceeding one hundred dollars, to be recovered in a summary manner before any stipendiary justice, upon the oath of one or more witnesses, and in default of payment such offender may be imprisoned for any term not exceeding three months.

# CHAPTER 140.

## Of Preventing the Introduction and Spread of Insects Destructive to Crops.


SECTION
1.—Governor in Council may make orders to prevent introduction of Colorado beetle; and prohibit landing of potatoes, &c.; and direct destruction of articles; violation of order; forfeiture; penalty.
2.—Governor in Council may make orders to prevent the spreading of Colorado beetle; and direct the destruction of articles; and entry on lands for purposes of chapter; and may prohibit keeping specimens; violation of order; penalty.
3.—Orders to be gazetted.
4.—Recovery of penalties; imprisonment.


**1.** The Governor in Council may, from time to time, make such orders as may be deemed expedient for preventing the introduction into this colony and its dependencies, of the insect designated as Doryphora Decemlineata or Chrysomela Decemlineata, and commonly called the Colorado Beetle. Any such order, if the Governor in Council shall think fit, may prohibit or regulate the landing in this colony of potatoes, or of the stalks or leaves of potatoes, or other vegetable substance, or other article the landing whereof may appear to the Governor in Council likely to introduce the said insect into this colony, and may direct or authorize the destruction of any article if landed. If any person lands, or attempts to land, any article in contravention of any order under this chapter, such article shall be liable to be forfeited in like manner as goods, the importation whereof is prohibited by the Acts relating to the Customs, are liable to be forfeited; and the person so offending shall be liable to a penalty not exceeding one hundred dollars.

**2.** The Governor in Council may, from time to time, make such orders as may be deemed expedient for preventing the spreading in this colony of the said insect. Any such order may, if the Governor in Council shall think fit, direct or authorize the removal or destruction of any crop of potatoes, or other crop or substance on which the said insect, in any stage of existence, is found, or to or by means of which the said insect may appear to the Governor in Council likely to spread, and the entering on any lands for the purpose of such removal or destruction, or for the purpose of any examination or enquiry authorized by such order, or for any other purpose of the order. Any such order may, if the Governor in Council think fit, prohibit the keeping selling, or exposing or offering for sale, or the keeping of living specimens of the said insect in any stage of existence, or the distribution in any manner of such specimens. Any person committing any offence against or acting in contravention of such order, shall incur a penalty not exceeding one hundred dollars.

**3.** Every order made under this chapter shall be published in the *Royal Gazette*.

**4**. Penalties imposed by this chapter may be recovered in a summary manner, with costs, before a stipendiary Magistrate, and by distress and sale of the offender's goods and chattels; in default of payment of such penalties and costs, the offender may be committed to prison for a period not exceeding three months.

# CHAPTER 141.

## Of the Keeping of Dogs.


SECTION
1.—Dogs to be clogged.
2.—Pointers, setters, spaniels and terriers to be licensed.
3.—Dogs maiming sheep, &c., may be destroyed. Owners may sue.
4.—Justices may determine complaints for injury by dogs.
5.—Justices may order dogs to be destroyed.
6.—Justices may award damages to persons bitten or injured.
7.—Owners of sheep, &c., may recover damages.
8.—Magistrates to prepare annual statement of sheep killed. Rate to be levied to indemnify owners.
9.—Rate payable once a year.
10.—Constable may distrain for rate.
11.—If no chattels, destroy dogs.
12.—Rate avoided by destroying dog.
13.—Duties of constables.
14.—Dogs not to be brought from Labrador. Penalty.
15.—Justice of Peace may order dangerous dog to be destroyed.
16.—Magistrates to furnish annual returns of license fees.

SECTION
17.—In St. John's, east and west, dogs not to be kept. Exceptions.
18.—Licenses.
19.—Magistrates to keep register of licenses.
20.—Dogs at large may be destroyed.
21.—Penalty for keeping dog not licensed,
22.—Magistrates to make annual returns of loss to sheep or cattle from dogs.
23.—License fund to be applied to compensation for losses from dogs.
24.—Appropriation of balance.
25.—Dogs under six months old exempt from license.
26.—Inhabitants of districts, &c., may petition for prohibition of dogs.
27.—Petition to be sent to nearest Magistrate.
28.—Petition to be examined and certified.
29.—Magistrate may require proof of signatures.
30.—Proclamation prohibiting keeping of dogs to issue.
31.—After proclamation, keeping of dogs unlawful. Exceptions.
32.—Duty of constables.
33.—Duration of proclamation.
34.—Recovery of fines and penalties. Appropriation.

Schedules.


**1**. Every dog found at large, without its owner or other person in charge thereof, is required to have fastened to its neck a clog, or piece of wood, not less than seven pounds weight, and not less than eighteen inches in length, with the name of the owner stamped or marked thereon, or to be effectually muzzled; and every dog so found at large, without its owner or other person in charge thereof, and not clogged or muzzled as aforesaid, may be immediately shot or otherwise destroyed by any person: Provided that this section shall not apply to pointers, setters, spaniels and terriers licensed by the Magistrate as hereinafter provided.

**2**. No person shall have in his possession any pointer or setter, spaniel or terrier dog, without obtaining a written license from a stipendiary Magistrate, under a penalty not exceeding twenty dollars, such license to be given only after an inspection of such dog by the said Magistrate. Every

dog so licensed shall wear a collar with the owner's name in full thereon, and such owner shall pay for every license for a pointer or setter the sum of two dollars per annum, and for every spaniel or terrier a free license may be granted.

**3.** Every licensed or unlicensed dog discovered killing, maiming or worrying sheep, lambs, horses, goats, cattle of any description, or poultry, may be immediately shot or otherwise destroyed by the owner of such sheep, lambs, horses, goats, or cattle, or poultry, or by any person witness of such killing, maiming or worrying.

**4.** If any licensed or unlicensed dog shall kill, maim, or injure any sheep, lamb, horse, goat, cattle of any description, or poultry, any Justice shall, upon complaint made by the owner thereof, or by any person in his behalf, issue his warrant against the owner of such dog to appear before him on a certain day; and such Justice may proceed to hear the said cause or complaint, and, if he shall see fit, give judgment therein for the value of each and every sheep, lamb, horse, goat, cattle of any description, or poultry, so killed, maimed, or injured, with costs, and enforce the payment of such judgment by execution or distress on the goods and chattels of the defendant; and should no goods or chattels of the defendant wherewith to satisfy such judgment and costs be found, the said Justice may commit such defendant to gaol for any period not exceeding thirty days.

**5.** The said Justice shall, upon hearing the said complaint, besides such judgment, make his order in writing that the dog so killing, maiming or injuring as aforesaid, be forthwith destroyed.

**6.** If any licensed or unlicensed dog shall bite or otherwise injure any person, such person may proceed before any Justice and recover damages for the injury in the mode prescribed by the fourth section of this chapter, and such Justice may make an order for the destruction of such dog, or such person may proceed by an action in any Court of competent jurisdiction; and it shall not be necessary in such action for such person to aver or prove that the defendant had knowledge of the mischievous propensities or habits of the said dog.

**7.** Nothing herein contained shall prevent the owner of any sheep, lambs, horses, goats, cattle of any description or poultry from proceeding by action in any Court of competent jurisdiction to recover the value of any such sheep, lambs, horses, goats, cattle or poultry, or any special damage arising to such owner from the killing, maiming or injuring of such sheep, lambs, horses, goats, cattle or poultry; and it shall not be necessary in such action for the plaintiff to aver or prove that the defendant had knowledge of the mischievous propensities or habits of the said dog.

**8.** The stipendiary Magistrates of the several districts are hereby required once in each year to prepare a statement, from information furnished on the oaths of the owners of all sheep, lambs, horses, goats, cattle

and poultry destroyed in their respective districts by dogs, of the number and value of such sheep, lambs, horses, goats, cattle and poultry and the names of the respective owners; and the said Magistrates, upon consideration of the said statement, shall order a rate to be levied on the owners of dogs not exceeding one dollar for each dog owned by any person residing within such distance from the place where any such sheep, lambs, horses, goats, cattle or poultry may have been destroyed by dogs in the course of the year then preceding, as the Magistrates may determine; such rate together with the fees for licenses under section two, to be appropriated towards indemnifying the owners of such lambs, horses, goats, cattle or poultry so destroyed for the loss they may have sustained and for all incidental expenses, in the event of such owners being unable to obtain such indemnity from the owner of the dogs doing the damage. Provided that the owner of any dog for and in respect of which the license fee mentioned in the second section may have been paid, shall not be subject to the rate mentioned in this section.

**9.** The said rate shall be payable only once in each year, at such times as may be stated in orders to be made in pursuance of the foregoing section; and it shall, if necessary, be recovered by warrant of distress, to be issued by the Magistrate making such orders.

**10.** Any constable to whom a warrant, issued under the preceding section, may be directed, shall demand and collect the said rate from all owners of dogs within the limits prescribed in such warrant; and in the event of non-payment within fourteen days from the first demand, the constable holding such warrant may recover the amount of such rate and all expenses from the owners of such dogs by distress of the goods and chattels of such owners, and a sale thereof within five days from the time of such distraint.

**11.** Any constable holding a warrant, issued under this chapter, and not being able to find goods or chattels of the person against whom such warrant may be directed sufficient to satisfy the exigencies thereof, may forthwith destroy or cause to be destroyed any dog owned by such person and in respect of which such warrant may have been issued.

**12.** Any person upon whom any rate may be levied, in pursuance of this chapter, may, at any time previously to the sale prescribed by the tenth section, relieve himself of all liability for and in respect of such rate, by destroying or causing to be destroyed, or delivering up to any constable for the purpose of being destroyed, any dog owned by such person and in respect of which such rate may have been levied.

**13.** The police constables in the several districts shall carry out the provisions of this chapter by the destruction of all dogs found at large and not clogged, muzzled, or licensed; and any constable refusing or neglecting to destroy such dogs shall for the first offence be subject to a fine of

four dollars, and for a second or subsequent offence shall be subject to a fine not exceeding twenty dollars.

**14.** No dogs shall be brought into any of the electoral districts of this colony from Labrador, or that portion of the coast from Cape Ray extending north to Cape John. Any dogs which have been brought from any of such places into any other electoral district shall be forthwith destroyed; and any person hereafter having or keeping any such dog in his possession, shall be subject to a penalty of twenty dollars for every such dog.

**15.** Any Justice of the Peace shall, upon complaint, cause any mischievous or dangerous dog to be destroyed.

**16.** Every Magistrate shall, once in each year, furnish to the Receiver General an account of all licenses fees and rates received by him, and of the disposal thereof, and shall pay over to the Receiver General any license fees not applied by him to the purposes of this chapter.

PROVISIONS RELATING TO THE ELECTORAL DISTRICTS OF ST. JOHN'S EAST AND WEST.

**17.** It shall be unlawful for any person within the limits of the electoral districts of St. John's East and West, to have in his possession or on his premises any dog except as hereinafter provided.

**18.** Any person may obtain from a stipendiary Magistrate a license to keep a dog or dogs within the said electoral districts, upon payment of a fee of three dollars for pointers or setters, and one dollar for spaniels, terriers and other dogs; and a license fee of five dollars for all bitches. The license when granted shall be of force for twelve months from the date of the issue thereof, and may be renewed from year to year upon payment of the above fees.

**19.** Stipendiary Magistrates shall keep a register, in which shall be entered the name of every licensee, the date of the issue of license, and the description of the dog licensed.

**20.** It shall be the duty of police constables, and it shall be lawful for any other person, to kill any dog found at large and not within charge, call or control of any owner or other person within the limits of the aforesaid electoral districts.

**21.** Any person having in possession any dog not licensed as aforesaid shall be liable to a penalty of not exceeding twenty dollars.

**22.** It shall be the duty of the Magistrates for the Central District, on or before the thirty-first day of December in each year, to make returns to the Colonial Secretary of all damage and loss to sheep or cattle caused by dogs within the said electoral districts which shall have been judicially

proved before them, with the names of the persons who have sustained such damage and loss, and the amount of damage and loss which such persons have respectively sustained.

**23**. On and after the first day of February in each year the fund arising from the issue of dog licenses under section 13 of this chapter shall be divided proportionally among such persons as may have sustained loss or damage to sheep or cattle by dogs within the districts of St. John's East and St. John's West during the preceding year, ending 31st day of December, where such persons have not been otherwise compensated for such loss or damage: Provided that such persons shall have given notice of such loss or damage before said first day of February, and provided that proof of such loss or damage be made to the satisfaction of the stipendiary Magistrates of the central district: Provided also that no person shall receive a larger sum than the loss he may prove that he has sustained.

**24**. After providing for the compensation aforesaid, the balance of said fund, if any, shall be handed over by the Clerk of the Peace for the central district to the Receiver General, and shall be applied by the Governor in Council to public works or improvements in the said districts of St. John's East and St. John's West.

**25**. No penalty shall attach in respect to the keeping of any dog under six months old without a license, but dogs under that age shall not be permitted to go at large.

PROVISIONS RELATING TO THE PROHIBITION OF THE KEEPING OF DOGS WITHIN CERTAIN AREAS.

**26**. It shall be lawful for the duly qualified electors, resident within any area or district within this colony, to present to the Governor in Council a petition in the form prescribed by the schedule to this chapter, or as near thereto as may be, setting forth the limits or boundaries within which such area or district is comprised, and the names of the towns, harbors or settlements included therein, and praying for a proclamation prohibiting the keeping of dogs within such area or district.

**27**. Such petition shall be sent to the nearest resident stipendiary Magistrate, and shall be by him (after examination and certificate as hereafter provided) furnished to the Governor in Council.

**28**. If, upon due scrutiny of such petition, the stipendiary Magistrate shall find that the same contains the *bona fide* signatures of one-third of the duly qualified electors resident within the limits or boundaries set forth in the said petition or requisition, he shall forthwith make a certificate to that effect, endorsed upon or attached to the petition, and shall forward the same to the Governor in Council.

**29**. Any stipendiary Magistrate to whom such petition shall be presented may, before certifying the same to the Governor in Council as

aforesaid, require proof to be made before him of the *bona fide* signature of any of the names subscribed to such petition upon the oath of either the party whose name purports to be signed or of a witness to such signature.

**30**. Upon receipt of such petition containing the signatures of not less than one-third of the electors resident within any such area or district certified as aforesaid, the Governor in Council shall issue a proclamation or public notice prohibiting the keeping of dogs within such area or district.

**31**. From and after the date prescribed in and by such proclamation or notice, it shall not be lawful for any person resident within such area or district to keep, or to have in his possession, or under his control, any dog within the area or district to which such proclamation or notice shall relate, under a penalty not exceeding fifty dollars or imprisonment for a term not exceeding three months. This prohibition shall not apply to any person or persons travelling or passing through such areas or districts and having a dog or dogs, licensed under this chapter, in his or their possession, charge or control, and not at large.

**32**. It shall be the duty of all police constables to kill all dogs found by them in any area or district in which the keeping of dogs is prohibited under the next preceding section of this chapter, except shepherd dogs or collies, and those excepted under the said section, and all such dogs not so excepted may be killed by any person whomsoever; and it shall be lawful for any person to destroy any dog kept in contravention of the provisions of the said section.

**33**. After such proclamation or notice shall have issued as aforesaid, no new petition on the same subject shall be presented from such area or district until the expiration of ten years from the date of such proclamation or notice; and, if no such petition be presented within three months after the expiration of such proclamation or notice, the operation of such proclamation or notice, with reference to any such area or district, shall be considered as agreed to by the electors of such area or district, and a new proclamation or notice shall issue, as of course, containing the provisions of the former proclamation or notice, which shall continue in full effect for ten years from the expiration thereof.

PENALTIES.

**34**. All fines and penalties under this chapter may be sued for and recovered in a summary manner before a stipendiary Magistrate or a Justice of the Peace, and all fines shall be paid to the person who shall give information of the offence and prosecute the offender to conviction.

SCHEDULE.

FORM OF PETITION.

*To His Excellency the Governor in Council :*

The petition of the undersigned humbly sheweth,—

That your petitioners are duly qualified electors residing in an area or section of the electoral district of , comprised and bounded as follows :

That the said area or section contains the following towns (or harbors, or settlements, as the case may be) :

That your petitioners are desirous and humbly pray your Excellency in Council that a proclamation or notice be issued under the provisions of chapter 141 of the Consolidated Statutes, prohibiting the keeping of dogs within the above described area or section of the said district, and petitioners will ever pray, &c.

Dated at , the day of , 18 .

# CHAPTER 142.

## Of Killing Wolves.

SECTION
1.—A reward of $12 paid for each wolf killed.
2.—Justices to give certificates.
SECTION
3.—Return of such certificates to be laid before the Legislature

**1**. Any person who shall produce or cause to be produced before any Justice the skin of a wolf recently killed within this colony, and shall make and subscribe, or cause to be made and subscribed, a declaration in manner and form as in Schedule A. of this chapter, that the same was killed by or for such person, such person so applying shall be paid a reward of twelve dollars ; and if any declaration so made shall be false, the person wilfully making such false declaration shall be guilty of a misdemeanor.

**2**. Such Justice shall, on such proof being exhibited, detain or destroy the said skin, and give to the person applying a certificate as in Schedule B. of this chapter, which being laid before the Colonial Secretary, the Governor shall issue his warrant for the payment from the treasury of the colony of the said sum of twelve dollars.

**3.** There shall be laid before the Legislature at the opening of every session, a return of the number of such certificates so presented to the Colonial Secretary, with the name and residence of the Justice certifying, and the name and residence of the party to whom such reward was thereby made payable.

## SCHEDULE A.

I, A. B, of , in the district of , do solemnly declare that I (or A. B., of , in the district of , in my presence) on the day of , in the year of our Lord , at , in the district of , within the island of Newfoundland, did kill a wolf, the skin of which I have deposited with A. B., Esquire, Justice of the Peace for the district of Newfoundland.

## SCHEDULE B.

I, A. B., Justice of the Peace for the district of Newfoundland, do hereby certify that A. B., of , in the district of , within the colony of Newfoundland, came before me and deposited with me the skin of a wolf, and being examined, did solemnly declare the same was killed on the day of , in the year , by him (or A. B., in his presence), at , in the district of .

Given under my hand this day of , in the year of our Lord .

A. B.

# CHAPTER 143.

## Of the Preservation of Deer.

SECTION
1-3.—Protection of moose and elk.
4.—Time during which caribou may be killed.
5.—Number which may be killed.
6.—License necessary to non-residents.
7.—Who may issue licenses; conditions.
8.—Customs' clearance necessary where caribou flesh, antlers, &c., exported.
9.—Licensee must produce license on demand.
10.—Persons untruthfully declaring liable to indictment for perjury.
11.—Flesh shall not be exported for sale.
12.—Traps or pits not permitted; penalty.
SECTION
13.—Hunting with dogs not permitted; penalty.
14.—Penal section.
15.—Search warrant may be granted.
16.—Relative to forfeited meat.
17.—Prosecutor entitled to half of fines.
18.—When persons incapable of receiving license.
19.—Right of poor settler to kill.
20.—Duties of grantors of licenses.
21.—Members of surveying parties exempt in certain cases.
22.—Title.
Schedules.

1. No person shall hunt, kill, wound, or destroy any moose or elk, now or hereafter to be imported into this colony, or their progeny, for a period of ten years from the first day of January, one thousand eight hundred and eighty-six.

2. If, within the time specified in the foregoing section, any person shall have in his possession the carcase of any moose or elk, or any part thereof, such possession shall be held to be *prima facie* evidence of his having killed the same contrary to this chapter.

3. Any person violating the first section of this chapter shall forfeit and pay a sum of not exceeding two hundred dollars and not less than fifty dollars, and, in default of payment, shall be imprisoned for any period not exceeding three months and not less than one month.

4. No person shall kill, or pursue with intent to kill, any caribou, from the fifteenth day of February until the fifteenth day of September in any year, nor shall any person expose for sale, or have in his possession, any green caribou skin, or any part of the carcase of a caribou, except from the first day of October until the tenth day of March in any year, both days inclusive. The possession of any green caribou skin or meat, or any part of the carcase of the caribou, during the close season, shall be presumptive evidence of such caribou having been illegally killed or taken.

5. No person shall, during any one season, kill or take more than five stag and three doe caribou.

6. No person not actually resident in this colony or its dependencies shall kill or take caribou without having first procured therefor to himself a license, issued for the season, as hereinafter provided, and shall pay for such license an annual fee of one hundred dollars: Provided, nevertheless, that no officer of any British warship stationed on the coasts of this Island for fisheries protection, shall be compelled to procure or pay for such annual license.

7. The license required by this chapter may be issued by a stipendiary Magistrate, collector or sub-collector of Customs, a Justice of the Peace, and such other officers or persons as may be empowered by the Governor in Council for that purpose, the person requiring the license first paying therefor a fee of one dollar, and making oath or affirmation that he will not take or kill, for the season for which the license is issued in manner provided by this chapter, a greater number than five stag and three doe caribou, and that he will use his best endeavours to have the caribou, or flesh of any caribou, he may kill, and which may not be consumed for food, and which is suitable for food, carried out of the woods or interior of the country into some town or settlement, within ten days after the caribou shall have been killed; and that he will duly clear at the Custom House any caribou heads, antlers, skins, or other parts of the caribou which he may lawfully export or carry out of this colony.

**8.** No person shall export or carry with him out of this colony any venison, or the heads, antlers, skins, or other parts of caribou, without first clearing the same at some Custom House, or with a duly authorized officer of Customs, or an officer empowered for the purposes of this chapter, and the person so clearing shall make oath or affirmation of the quantity and numbers of the property aforesaid so exported or carried, and the manner in which the same shall have been obtained and that the same is not exported as an article of commerce, and shall also make oath or affirmation of the numbers (if any) of the caribou he himself, or any party he shall have been with, have killed or taken in the course of the then, or of the immediately preceding season, and he shall pay a fee to the officer of one dollar for such clearance.

**9.** Every holder of a license granted under the provisions of this chapter must produce the same when required so to do by any Magistrate, Justice of the Peace, constable, collector, or sub-collector of Customs.

**10.** Any person knowingly or wilfully making a false declaration on oath, or false affirmation, under the preceding section of this chapter, shall, in addition to any other penalty to which he may be subject under this chapter, be liable to be indicted, tried, convicted and punished for the crime of wilful and corrupt perjury.

**11.** No person shall export in any form the flesh of caribou as an article of commerce.

**12.** No person shall set, or attempt to set, any snare or trap or pit for the destruction of caribou, under a penalty of not less than twenty-five nor more than fifty dollars for each offence, and any person finding any such snare or trap may destroy the same. The possession of any such snare or trap shall be presumptive evidence of the attempt of the person in whose possession it is found to set the same for the destruction of caribou.

**13.** Any person who shall hunt, or chase, or kill, or pursue with intent to kill, any caribou with dogs, shall be liable to a fine of twenty-five dollars, in addition to any penalties to which he may be otherwise liable under this chapter, to be recovered in a summary manner before a stipendiary Magistrate or Justice of the Peace, by any person who shall prosecute the offender to conviction.

**14.** Any person who shall violate the fourth, fifth, sixth, or eleventh section of this chapter in any particular, shall be deemed guilty of an offence, triable summarily in any place in this colony before any stipendiary Magistrate or Justice of the Peace, and for every violation of which he shall be convicted, he shall be liable to forfeit and pay a fine not exceeding four hundred dollars, and in default of payment, he shall be liable to imprisonment for any period not exceeding three calendar months: Provided, that in cases in which a fine of forty dollars or up-

wards may be imposed, or any term of imprisonment of one month or more may be awarded, the person convicted may, within one week after judgment, upon giving satisfactory security to the convicting Magistrate or Justice of the Peace, appeal to the Supreme Court in St. John's or on Circuit.

**15.** Whenever any person shall make affidavit before a stipendiary Magistrate, or before a Justice of the Peace, that he has reason to suspect and does suppect that caribou hides or any portion of the carcase of a caribou, killed during the close season, are or is concealed on the premises of any person, it shall be lawful for such stipendiary Magistrate or Justice to cause a search warrant to be issued authorizing the person to whom it is addressed to search such suspected premises, and to seize and take away any such hides or any portion of the carcase of a caribou found therein, to be dealt with according to law.

**16.** It shall be the duty of the commissioner or other person appointed by the Government, or in the absence of any such person, of the Magistrate or Justice before whom the prosecution takes place, to send caribou meat, when seized and forfeited under the provisions of this chapter, to the overseers of the poor for the district in which the offence has been committed for the use of the poor, such overseers defraying the expenses of transportation. If the place in which such meat is situate be too remote from the overseers of the poor for the district for the meat to be transported without too great expense, then the same shall be distributed among the poor of the immediate neighbourhood by such commissioner, or other person appointed by the Government, or Magistrate or Justice. The skin and horns shall be forfeited and sold by such officers, and the proceeds shall go to the Receiver General for the use of the colony.

**17.** Any person may prosecute for an offence under this chapter, and the prosecutor shall be entitled to one-half of any fine which may be imposed, upon any information or complaint made by him, and the other half shall go the Receiver General for the use of the colony.

**18.** Any person who shall be convicted of any violation of the provisions of this chapter shall thereafter be incapable of receiving a license under this chapter.

**19.** Notwithstanding anything contained in this chapter any poor settler may kill any caribou for his immediate consumption or that of his family, or may kill, for purposes of sale within this colony, during the season between first October and fifteenth February, not more than ten caribou, save and except as restricted by sections twelve and thirteen of this chapter.

**20.** All Magistrates, Justices of the Peace, Collectors or Sub-Collectors of Customs, or other persons who shall grant licenses under the provisions of this chapter, shall, before the thirty-first January in each

year, make a return to the Colonial Secretary, which shall contain in detail—

(1.) The number of licenses issued during the year.

(2.) The names of licensees.

(3.) The amount of fees collected.

(4.) The number of complaints made for a breach of this chapter.

(5.) The names of complainant and accused, and the manner in which each complaint has been disposed of; and

(6.) All such further information as may be necessary for carrying into operation the provisions of this chapter.

**21.** Nothing in this chapter shall extend to the members of surveying parties, when engaged in Government surveying, who shall kill caribou for the purposes of food.

**22.** This chapter may be cited as "The Deer Preservation Act, 1889."

## SCHEDULE A.

### Form of License.

According to the provisions of chapter 143 of the Consolidated Statutes (second series), entitled "Of the Preservation of Deer," permission is hereby given to A. B., of , &c, to kill five stag and three doe caribou in Newfoundland and its dependencies, during the season from the first day of October until the fifteenth day of February next ensuing, both days inclusive, he having paid the license fee of one hundred dollars, and having made the oath or affirmation required by the seventh section of said chapter.

Dated at , this day of , A. D. 18 .

A. B.,
Collector of Customs (or, as the case may be).

## SCHEDULE B.

The information of , in the Island of Newfoundland, (fisherman), who saith that he hath reason to suspect, and doth suspect, that (insert whether meat, horns, skin, or parts thereof), was (or were) (describe the offence as "killed in close season," or by dogs, &c.,) in the

district of , (by some person or persons unknown, or name the person), in the district of . (Here insert the cause of such suspicion).

Wherefore he prays that a search warrant may be granted to search such premises or property for the same.

(Signature of deponent)

Sworn (or affirmed) before me, this day of , A. D. 18 , at .

W. S., J. P.

## SCHEDULE C.

### Search Warrant.

Newfoundland, District of

*To all or any of the Constables of , in the district of* ,

Whereas , of , in the district of , has this day made oath before me, the undersigned, that he hath reason to suspect, and does suspect, that (describe whether meat, skins, horns, or parts thereof), was (or were) (describe the offence as "killed in close season," or "killed by dogs,") in the district of , by some person or persons unknown, or (naming the person or persons), and are concealed in or upon the premises or the property of , in the district of .

These are therefore to require you, in Her Majesty's name, with proper assistance, diligently to search such property or premises in the day time for the said (describe it, whether meat, skins, horns, or parts thereof), and if you shall find the same, or any part thereof, you bring the same before me, or some other Justice of the Peace or stipendiary Magistrate, to be dealt with according to law.

Given under my hand and seal, at , in the district of , this day of , A. D. 18 .

W. S., J. P. [L. S.]

# CHAPTER 144.

## Of the Preservation of Game.


SECTION
1.—Grouse and partridge not to be killed between the twelfth January and fifteenth September.
2.—Other wild birds not to be killed between twelfth January and twentieth August.
3.—Rabbits and hares; close time; proviso.
4.—Stipendiary Magistrates may prohibit destruction of rabbits, &c.
5.—Otters and beavers; close time.
6.—Power of constable or peace officer to search.
7.—Further power to search house of person suspected.
8.—Married women liable; husband liable for penalty.
9.—Persons resisting constable liable to penalty.
10.—Persons carrying fire-arms on Sunday may be fined.
11.—Constable may arrest on view.
12.—Chapter not to apply to poor settlers.
13.—Penalties for breaches not specified.
14.—Recovery and application of penalties.


**1.** No person shall hunt, kill, wound, take, sell, barter, purchase, receive, give away, or have in his possession, any ptarmigan or willow grouse (commonly called partridge), or any other kind of grouse or partridge, or the eggs of any such birds within this colony between the twelfth day of January and the fifteenth day of September in any year, under a penalty of not exceeding one hundred dollars, or, in default of payment, of imprisonment for a period not exceeding three months: Provided it shall not be held unlawful to sell, barter, purchase, receive, give away, or have possession of such birds, where the party against whom a complaint is made shall prove that the said birds were killed between the fifteenth day of September and the twelfth day of January next succeeeding: Provided further, that any person who shall actually have in his possession at or upon the twelfth day of January aforesaid, any ptarmigan or willow grouse shall be allowed to offer for sale such ptarmigan or willow grouse until the twenty-second day of January in each year.

**2.** No person shall hunt, wound, kill, take, sell, purchase, or give away, or have in his possession, any curlew, plover, snipe, or other wild or migratory birds (excepting wild geese), or the eggs of any such birds, within this colony between the twelfth day of January and the twentieth day of August in each year, under a penalty of not less than twenty-five dollars nor exceeding two hundred dollars, or, in default of payment, of imprisonment for a period not exceeding three months.

**3** No person shall hunt, take, kill, wound, sell, barter, receive, purchase, or give away, any wild rabbit or hare, within this colony and its dependencies, from the first day of March until the fifteenth day of September in any year, under a penalty of twenty-five dollars, and, in default of payment, to be imprisoned for a period not exceeding one calendar month: Provided, that it shall not be held to be unlawful to sell, barter, receive, purchase, or give away, such wild rabbit or hare in any case where the party against whom a complaint is made shall prove that the said wild

rabbit or hare was killed between the fifteenth day of September and the first day of March next succeeding: Provided also, that with the permission of a Magistrate such rabbit or hare may be taken alive at any time and in any district for the purpose of propagating the species.

**4.** Stipendiary Magistrates may, in their respective districts, by printed public notice, prohibit the destruction of rabbits or hares within any part of such district, to be described and limited in such notice for such time as may be deemed necessary for the propagation of such rabbits or hares in such parts of districts, under a penalty not exceeding twenty-five dollars, and, in default of payment, to be imprisoned for a period not exceeding one calendar month.

**5.** No person shall take, kill, wound, or destroy, any otter or beavers, within this colony, between the first day of April and the first day of October in any year, under a penalty of twenty-five dollars, and, in default of payment, to be imprisoned for a period not exceeding one calendar month.

**6** Any constable or peace officer may seach any person whom he may have good cause to suspect of being unlawfully in possession of any birds or animals in this chapter mentioned, and such constable or peace officer may stop and search any cart or other conveyance in which he may have good cause to suspect that any such birds or animals are being carried by such person; and should any such birds or animals aforesaid, be found upon such person, cart, or conveyance, he shall seize and detain such birds or animals.

**7.** Upon information, upon oath, in writing, being lodged with a Justice, of any person having in his possession, by secreting in his house or other building or place, any such birds or animals, aforesaid in violation of the provisions of this chapter, such Justice shall issue his warrant, directed to any constable or peace officer, to search therein; and should any such birds or animals, aforesaid, be found therein, such constable or peace officer shall seize and detain the same, and shall cite the offender before such Justice, to be dealt with according to law.

**8.** Married women, concerned in any breach of the provisions of this chapter, shall be liable for the penalty attaching to such breach as if they were unmarried women or principals, but the husband of the person so offending shall not be liable to be also sued for the same offence; in the case of a married woman the fine or penalty imposed may be levied upon the property of the husband.

**9.** Any person resisting any constable or peace officer engaged in carrying out the provisions of this chapter, shall be liable to a penalty not exceeding one hundred dollars, and, in default of payment, may be imprisoned for a period not exceeding six months.

**10**. Any person, except a traveller on a journey, found, on Sunday, carrying fire-arms, shall be subject to a fine not exceeding forty dollars, and, in default of payment, to imprisonment for a period not exceeding one month.

**11**. Any constable or peace officer may arrest on view any person found violating the provisions of this chapter.

**12**. Nothing contained in this chapter shall extend to any poor settler who shall kill any birds or animals, mentioned in this chapter, for his immediate consumption or that of his family.

**13**. Any offence against the provisions of this chapter, for which no penalty is hereinbefore specifically provided, shall be punishable by a fine not exceeding twenty-five dollars, and in default of payment, by imprisonment not exceeding one month.

**14**. All fines and penalties under this chapter shall be sued for and recovered in a summary manner, on complaint before a Justice of the Peace, by any person who shall inform and sue for the same, and all penalties and forfeitures imposed under this chapter shall be awarded and paid to such complainant who shall prosecute the offender to conviction; and such Justice of the Peace shall have power to award all costs and expenses consequent upon such complaint and prosecution, in addition to the penalty hereinbefore provided to be paid therewith.

# TITLE XIX.

## CHAPTER 145.

### Of the Naturalization of Aliens.

SECTION
1.—An alien may be naturalized after five years' residence.
2.—After declaration Magistrate may sign certificate.
3.—Oath of allegiance.
4.—Certificate of allegiance.
5.—Copy of declaration and oath shall be sent to Colonial Secretary.
6.—Fee for certificate.
7.—An alien complying with provisions of this chapter shall be entitled to all rights, &c., of a British subject.
8.—Penalty for false declaration.
9.—Meaning of "disability."

**1**. Any alien, not being under any disability, who shall desire to become naturalized as a British subject, and who shall have resided in this colony for a period of five years next preceding the date of the declaration hereinafter mentioned, may make and sign before a stipendiary Magistrate a declaration in duplicate in the form of schedule A to this chapter.

2. After such declaration in duplicate shall have been so made, signed and deposited with such stipendiary Magistrate, he may sign and deliver to such alien a certificate of naturalization in the form of schedule B to this chapter.

3. Every alien receiving such certificate of naturalization, shall forthwith take the oath of allegiance and subscribe the same in duplicate as set forth in schedule C to this chapter; and, until such oath shall have been taken and subscribed, the certificate of naturalization shall not be valid.

4. Such stipendiary Magistrate administering the oath of allegiance shall certify under his hand, on such certificate of naturalization, the fact of the same having been taken and subscribed in the form of schedule D to this chapter, which certificate shall be evidence of its contents.

5. One copy of the said declaration and oath of allegiance so made, signed, taken and subscribed, shall be transmitted by the stipendiary Magistrate to the Colonial Secretary, and the other to the Chief Clerk of the Supreme Court, to be filed in their respective offices.

6. Every alien shall pay to the stipendiary Magistrate a fee of two dollars and fifty cents upon receiving the said certificate of naturalization, two dollars of which he shall transmit to the Receiver General for the use of the colony, and retain fifty cents to his own use.

7. An alien, having complied with the provisions of this chapter, and receiving such certificate of naturalization, shall be entitled to all the rights, privileges and immunities, and subject to all the liabilities of British subjects in this colony: Provided that nothing in this chapter contained shall qualify an alien to be the owner of a British ship.

8. Any person wilfully and corruptly making or subscribing any declaration under this chapter, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanour and be liable to imprisonment, with or without hard labour, for any term not exceeding twelve months.

9. In this chapter, if not inconsistent with the context or subject-matter, the term "disability" shall mean the state of being an infant, lunatic, idiot, or married woman.

## SCHEDULE A.

COLONY OF NEWFOUNDLAND.

To wit. }

I, A. B., of , in the said Colony of Newfoundland, , heretofore of , declare that I have resided in

the said Colony of Newfoundland for the period of five years next preceding the date of this declaration, and that I am desirous of becoming a naturalized British subject.

A. B.

Signed and declared by the said , before me,
at , aforesaid, this day of , 189 .

C. D.,
*Stipendiary Magistrate.*

## SCHEDULE B.

COLONY OF NEWFOUNDLAND.

I certify that , heretofore of , having complied with the provisions of chapter 145 of the Consolidated Statutes (second series), shall, upon taking the oath of allegiance, become a naturalized British subject, and shall from thenceforth be entitled to all the rights, privileges and immunities, and subject to all the liabilities of a natural-born British subject, as provided by the said chapter.

Dated at , in the said Colony, this day of 189 .

C. D.,
*Stipendiary Magistrate.*

## SCHEDULE C.

COLONY OF NEWFOUNDLAND.

I, , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her Heirs and Successors. SO HELP ME GOD.

A. B.

Sworn before me, at , in the said Colony,
this day of , 189 .

C. D.,
*Stipendiary Magistrate.*

## SCHEDULE D.

COLONY OF NEWFOUNDLAND.

I, , hereby certify that has this day taken and subscribed the oath of allegiance as a British subject, in accordance with chapter 145 of the Consolidated Statutes (second series).

Dated at , in the said Colony, this day of , 189 .

C. D.,
*Stipendiary Magistrate.*

# APPENDIX A.

PRIVATE ACTS.

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# 12 VIC., CAP. 14.

## An Act to enable the members of the Independent or Congregational Church to revive certain Trusts, and for other purposes.

[Passed 23rd April, 1849.]


Section
1.—Members of the Congregational Church may, at a public meeting, appoint nine persons as trustees.
2.—Trustees, &c., may sell and dispose of church property. Proviso.
3.—Authority vested in trustees, &c., to give title in law to lands, &c., sold by them.
4.—Vacancies in trust, how filled up.


Whereas in and by a certain deed bearing date the twenty-fifth day of June, Anno Domini one thousand seven hundred and ninety, made between Andrew Barns of the one part, and Richard Miller, George Kemp, Thomas Crew, John Brown, James Bayley, John Kemp, William Budden, junior, Richard Ledgard, William Budden, Gilbert Tullock, John Jones, Nathan Parker, Wallis Lang, Henry Philips, Edward Freeman, and Joseph Lowman, trustees therein named, of the other part, certain lands and premises situate in the town of St. John's, in this island, were conveyed and assured to the said trustees, for the purpose of erecting thereon a place of public worship for the members and congregation of the Independent or Congregational Church: And whereas in and by a certain other deed bearing date the fifteenth day of June, Anno Domini one thousand eight hundred and ten, certain other land, messuage and premises, with the appurtenances, situate in St. John's aforesaid, were conveyed, assigned, and assured by Henry Andrews and Elizabeth Andrews, to one Nathan Parker and one James Melledge therein named, for the use and benefit of the church aforesaid: And whereas a certain other messuage and premises, with the appurtenances, situate in St. John's aforesaid, were by a certain deed bearing date the eighth day of June, Anno Domini one thousand seven hundred and ninety-one, conveyed and assured by one Edward Freeman, for the use and benefit of the said church: Also whereas by reason of the death of the several trustees in the said several deeds named and described, the provisions of the said several trusts have become entirely inoperative, and the parties interested therein are without remedy either at law or in equity: And whereas petition has been made to the Legislature in its present session, by the members and congregation of the said church, for remedy and redress in the premises:

For remedy whereof, be it enacted, by the Governor, Council, and Assembly, in General Assembly convened, that it shall and may be lawful for the members of the said church, and being communicants therein, at a public meeting of the said members to be held for the purpose, which meeting shall be called by the minister of the said church for the time being,

at the request of at least ten members of the said church, being communicants as aforesaid, by the vote of a majority to consist of not less than two-thirds of such communicants present at such meeting, to nominate and appoint nine persons as trustees, for the purpose of carrying into effect the object, and intent, and the provisions of the said hereinbefore recited trusts, and the purposes of this act.

**2.** And be it further enacted, that the said trustees so nominated and appointed as aforesaid, or the majority of them, by and with the consent and approbation of not less than two-thirds of the said members of the said church, being communicants therein, then resident in St. John's aforesaid, and signified under their hands and seals, shall have, and are hereby declared to have, full power and authority to sell and dispose of all or any part or parts of the said lands, messuages and premises, with the appurtenances recited and described in the said several deeds of trust hereinbefore referred to, or mortgage the same, as may at any time be found requisite and necessary: Provided always, that all moneys arising from such sale or mortgage shall be applied solely and exclusively for the purpose of obtaining by purchase or otherwise a suitable piece of land or premises, and erecting thereon a church for the use and benefit of the said congregation, and for no other use or purpose whatsoever.

**3.** And be it further enacted, that the said trustees so nominated and appointed as aforesaid, or a majority of them, by and with the consent and approbation of two-thirds at least of the said members of the said church, and being communicants therein, then present in Saint John's aforesaid, signified under their hands and seals, upon the receipt of any moneys arising from the sale or mortgage of the said lands, messuages and premises, in the said several recited deeds or any of them or any part or portion thereof, shall have, and are hereby declared to have, full power and authority to make and execute good and sufficient title in law, as far as the same can be made under and by virtue of the said several recited deeds, and the powers and provisions of this act, to the said lands, messuages, and premises, or any part or portion thereof, to any purchaser or purchasers or any mortgagee or mortgagees.

**4.** And be it further enacted, that when and so often as any vcaancy shall happen by the death or permanent removal from the colony of any one or more of the said trustees so nominated and appointed as aforesaid, that then and in that case it shall be lawful for the members of the said church, and being communicants therein, at a public meeting of the said members to be called and held for that purpose, to nominate and appoint some other person or persons, as the case may require, to fill up such vacancy or vacancies, which meeting shall be called and held, and appointments shall be made, in the way and manner prescribed by the first section of this act: Provided nevertheless, that the person or persons so nominated and appointed to fill such vacancy or vacancies shall be members of the said church or congregation, and not otherwise.

# 16 VIC., CAP. 13.

## An Act to regulate the election of Trustees of Lands and Chattels for the Congregational Church in St. John's.

[Passed 15th June, 1853.]


Section
1.—Meeting of members of the Congregational Church to be holden to elect wardens. Vacancies in wardens, how filled up.
2.—Lands, &c., belonging to said church to be vested in wardens for the benefit of the members of the church.
3.—Wardens may lease said lands.
Section
4.—Wardens may be removed on sufficient cause. Proviso.
5.—List of wardens to be lodged at the Registrar's office, and to be evidence of their being such wardens. Schedule of property belonging to the Congregational church.


Whereas petition has been made to the Legislature, in its present session, by the members of the Independent or Congregational Church in St. John's, to enable them to constitute trustees for the purpose of holding and transmitting certain lands and chattels for the use of the said church: And whereas it is expedient and proper to comply with such reasonable petition.

**1.** Be it therefore enacted by the Governor, Council, and Assembly of Newfoundland, in Legislative session convened, and by the authority of the same, that it shall be lawful for the minister of the said church, on Sunday the twenty-sixth day of June next, to give, during the usual morning service, public notice to the male members of the said church of a general meeting of such members, to assemble at some convenient place then to be specified, and at a day not nearer than ten days from the time of giving such notice, at which meeting so to be holden nine persons shall be chosen and elected trustees, who shall, with their successors as hereinafter provided, have succession and be in all time coming the wardens of the said church, by the style and title of "The Wardens of the Saint John's Congregational Church": Provided nevertheless, that seven at least of the nine persons so to be elected and chosen in manner aforesaid shall be members of the said church or congregation, and shall be resident in the town of Saint John's. That as often as any vacancy shall occur in the said wardens, by death, resignation, or removal, or when the number of wardens chosen or elected from the members of the said church or congregation shall, by reason of the absence of any one or more of them from St. John's for a period of twelve months, be reduced to less than seven, it shall be lawful for the male members of the said church to supply such vacancy, or fill up such number in manner aforesaid, by election at a general meeting of the members of the said church, which shall be summoned by the minister for the time being of the said church in manner aforesaid, on requisition being made for that purpose in writing by any seven members of the said church; Provided nevertheless that in the

filling up of all vacancies, from whatever cause such vacancies may arise, there shall not be less than seven of the wardens chosen and elected from the members of the said church and congregation, and resident in Saint John's.

**2.** That the several pieces of land now belonging to the said church, and more particularly described in the schedule to this act annexed, and also all moveable property now belonging to the said church, and all other property and interest in property whether landed or moveable, which shall hereafter be acquired by, for, or on behalf of the same by purchase, descent, or otherwise, shall vest in and be holden by the said wardens for the use and benefit and subject to the control, order and direction of the said members of the said church in manner hereinafter prescribed: Provided always that nothing herein contained shall affect the rights of any parties claiming title, as against the said wardens or the said congregation.

**3.** That the said wardens, or a majority of them, shall have full power to let by lease all or any part or parts of the said lands and chattels so vested or to be vested in them (save and except that piece of land and premises on which the stone chapel of the said church now stands), for such term of years, and for such rent, and on such conditions as such wardens may deem desirable, for the use and benefit of the said church.

**4.** That it shall be lawful for the members of the said church assembled at a general meeting to be convened by the minister in manner and form aforesaid, for good and sufficient cause, to remove any of the said wardens: provided that notice of the object for which such meeting shall be distinctly given at the time of convening it, and provided that at least two-thirds of the members of the said Congregational Church, then resident in St. John's, shall assent to the removal of such warden or wardens.

**5.** That the minister for the time being of such Congregational Church shall, as soon as convenient, and not later than seven days after every election of wardens, lodge in the office of the Registrar of Deeds of the central district a full and correct list of the names of the wardens of the said church, and of the names of all new wardens; and the list of names of wardens so registered in such office, shall be held conclusive evidence of the fact of their being such wardens

## SCHEDULE.

### Of Property belonging to the Congregational Church in Saint John's, Newfoundland.

All that piece or parcel of land and premises situate on the southern side of the Queen's Road, in the town of Saint John's, abutted and bounded as follows, that is to say:—On the northward by the said Queen's Road; on the eastward by a public lane known as the Meeting-house Lane; on the southward by property belonging to Nicholas Gill, Esquire; and on the westward by a public lane; the said above described piece of land having been heretofore and for a period of more than thirty years used by the said Congregational Church as their burying place.

All that piece or parcel of land and premises situate in the town of Saint John's, and lying on the western side of a public road or lane known as the Meeting-house Lane, abutted and bounded as follows, that is to say: On the northward by property belonging to Nicholas Gill, Esquire; on the southward by property belonging to William and John Freeman, and on the westward by property belonging to the directors of the Bank of British North America.

All that piece of land and premises situate on the southern side of the Forest Road, and abutted and bounded as follows, that is to say:—On the northward by the said road; on the eastward by property belonging to Livingstone's estate, and on the southward and eastward by land belonging to Bulley's estate.

All that piece or parcel of land and premises situate, lying and being between the roads leading from Saint John's to Parsons' and Upper Long Pond, abutted and bounded as follows, that is to say:—On the north by the meeting of the said roads; on the south by the rivulet running from Duggin's Gully towards Quidividi Pond; on the east by the aforesaid road to Parsons' Pond, and on the west by the road aforesaid to Upper Long Pond; the said above described piece of land being held under lease from the Crown.

# 25 VIC., CAP. 11.

## An Act to Incorporate the St. John's Association in aid of the Colonial and Continental Church Society.

[Passed 27th March, 1862.]


Section
1.—Incorporation of Colonial and Continental Church Society.
2.—Society may hold real estate to the value of ten thousand pounds sterling.
3.—Annual subscribers of ten shillings or donors of ten pounds to be members.
4.—Committee to consist of not more than twelve nor less than six.
Section
5.—President and others to be committee men.
6.—Committee to be appointed at annual meetings; may be re-elected; subject to approval.
7.—Meetings of committee.
8.—Transfer of property; Standing rules.


Be it enacted by the Governor, Legislative Council and Assembly, in legislative session convened, as follows:—

**1.** That the persons hereinafter named, that is to say: Charles Simms, John Winter, M. D., Edward L. Jarvis, James Bayly, Hugh W. Hoyles, J. W. Marriott, the Rev'd Thomas M. Wood, Frederick B. T. Carter, and all such persons as now are members of the corresponding committee in Saint John's, Newfoundland, of the society called "The Colonial and Continental Church Society," and their successors, are hereby created a body corporate by the name of "The Saint John's Association in aid of the Colonial and Continental Church Society," and by that name shall have succession and a common seal, and by that name may sue and be sued, and may purchase, take and hold real and personal estate, and may let, sell and convey or otherwise manage and dispose of the same or any part thereof, and shall have power to make bye-laws for the rule and good management of the association, the establishing of the officers proper for the management of its affairs, and generally for the promotion of the interests of the society; but such bye-laws shall not be contrary to the laws of Newfoundland, or to the provisions of this act. The standing rules of the association previously to the passing of this act are confirmed as the bye-laws of the association.

**2.** The society shall not hold at any time real estate of greater value than ten thousand pounds sterling.

**3.** All persons paying an annual subscription of ten shillings sterling or upwards, or making at one time a donation of ten pounds sterling when admitted pursuant to the bye-laws, shall be members of the society; but if such annual subscription shall not be actually paid into the funds on or before the twenty-fifth day of November in each year, such member shall cease to be a member of the society until the same shall be paid, or until such person shall otherwise become a member thereof under some bye-law or rule of the society.

**4.** The association shall be governed and its affairs managed by a committee of not more than twelve, nor less than six persons; such committee constituting the corresponding committee of the parent society.

**5.** The president, vice-president, treasurer and secretary shall be *ex officio* members of all committees.

**6.** The committee and all the office-bearers shall be appointed at the annual general meeting of the society by the majority of the members present, according to the standing rules now in operation, or to be made under and by virtue of this act. The committee and the office-bearers shall be eligible for re-election. The appointment of members of the committee is to be subject to approval by the committee in England of the Colonial and Continental Church Society.

**7.** The committee shall meet as often as there may be occasion, five being a quorum.

**8.** All the property belonging to the association, and all the lands, tenements and property belonging to the Colonial and Continental Church Society situate in this island (the trustees of the last named society having testified their consent in writing thereto) shall, by virtue of this act, and without further and other conveyance, be transferred to and vested in the said incorporated society for the uses thereof.

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STANDING RULES OF THE ASSOCIATION, ADOPTED PREVIOUSLY TO THE ACT OF INCORPORATION.

1. Annual subscribers of ten shillings sterling or upwards shall be members of the association during the continuance of their subscriptions. Benefactors of ten pounds sterling or upwards at one time shall be life members.

2. Members will be entitled to receive the annual reports and other occasional publications of the parent society, and will have the same privileges as if they subscribed directly to the parent society.

3. The objects of this association shall be to call forth the zeal of Christians in general, and especially of members of the Church of England, in support of the Colonial and Continental Church Society, to promote its objects and proceedings, to procure collections, subscriptions and other contributions, and to give the society in England information upon all matters coming within the operation of the society.

4. No part of the lands or property of the Colonial and Continental Church Society shall be sold by the association without the express authority of the committee of the parent society, signified by a resolution authenticated by the signature of the secretary.

5. The whole of the funds obtained by the association, after deducting incidental expenses, shall be accounted for to the parent society in England.

6. A general meeting of the association shall be held annually on such a day as shall be fixed by the committee, when a report of the proceedings shall be read, and an account of receipts and disbursements presented duly audited, and the officer of the association chosen for the ensuing year.

7. The committee and all officers of the association, and the several teachers employed, shall be members of the Church of England.

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## 26 VIC., CAP. 16.

**An Act to enable the St. John's Association in aid of the Colonial and Continental Church Society to hold certain Lands in perpetuity.**

[Passed 25th March, 1863.[

Section.—Trustees may grant lease in perpetuity on certain conditions.

Whereas the Colonial and Continental Church Society have, for many years past held, and now hold under lease at a nominal rent from Thomas Bennett, James J. Rogerson and Hugh W. Hoyles, trustees appointed on behalf of the Crown, a certain parcel of land situate in the town of Saint John's, in trust, nevertheless, to and for the uses, intents and purposes following, that is to say: in trust that they shall and may, from time to time, and at all times during the continuance of the term therein granted, permit and allow the building now erected and being on the said premises, and heretofore known as and by the name of "The Saint John's Charity School," and the premises aforesaid, with the appurtenances, to be used, occupied and enjoyed, by the Colonial and Continental Church Society, for the purposes of a charity school to be kept therein, which is to be conducted according to the rules and upon the principles of the Colonial and Continental Church Society, and under the management of the corresponding committee of the same society; the said Thos. Bennett, James J. Rogerson and Hugh W. Hoyles, reserving the right to use the school-rooms for the purposes of a Sunday school and for the meetings of the several Church societies after school hours, and at such times, for any other educational, religious or charitable purposes, which they, after consideration with the corresponding committee, shall consider to be not inconsistent with their trust.

And whereas the wooden buildings now upon the said land, in which such school has been and now is held, have fallen into decay; and the said society are desirous of erecting new and substantial buildings of brick and

stone on the said land, but are unwilling so to do except upon a perpetual lease, which the trustees in consequence of all former leases given by them being for terms of twenty-one years only, do not consider themselves warranted in granting without the sanction of the Legislature: And whereas the said society having petitioned the Legislature for such sanction, a select committee of the Assembly has reported in favour of such petition being acceded to, under the limitations hereinafter mentioned.

Be it therefore enacted by the Governor, Legislative Council and Assembly, in legislative session convened, That it shall and may be lawful to and for the said THOMAS BENNETT, JAMES J. ROGERSON, and HUGH W. HOYLES, trustees as aforesaid, to grant and execute unto the Saint John's Association in aid of the Colonial and Continental Church Society, a new lease, at a nominal rent, of all the lands, messuages and tenements, included in the present demise, for a term perpetually renewable; and in trust that they shall and may, from time to time, and at all times, use, occupy and enjoy the same, for the purposes of a charity school to be kept therein, which is to be conducted according to the rules and upon the principles of the Colonial and Continental Church Society, and the management of the corresponding committee of the same society; the said THOMAS BENNETT, JAMES J. ROGERSON, and HUGH W. HOYLES, reserving the right to use the school rooms for the purpose of a Sunday school, and for the meetings of the several church societies after school hours, and (at such times) for any other educational, religious or charitable purpose which they, after consultation with the corresponding committee of the said society, shall consider to be not inconsistent with their trust, and on such further conditions as to the building of brick or stone on the said land, and as to such other matters necessary and incidental to their said trusts, as the said trustees may consider expedient.

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# 47 VIC., CAP. 15.

## An Act to repeal an Act passed in the Thirty-eighth year of the Reign of Her present Majesty, Chapter Twenty-one, entitled "The Methodist Incorporation and Trusts Act, 1875"' and for other purposes.

[PASSED 22ND APRIL, 1884.]

SECTION
1.—38th Vic., cap. 21, repealed.
2.—The Methodist Church incorporated.
3.—Certain lands, &c., vested in "The Methodist Church."
4.—Power to hold lands, &c., in this colony.
5.—Acts, &c., of corporation done abroad to be binding in this colony.
6.—Certified copy of such acts, &c., to be evidence of act.
7.—President or other officer to file in Colonial Secretary's office copy of basis of union, rules &c., of the "Methodist Church."

SECTION
(S 1)—Said rules, &c., to be the constitution of "The Methodist Church";
(S 2)—Rules, where published.
8.—President or other officer to file list of office-bearers, &c.
9.—President or other officer to file amendments of said rules, &c., and such amendments to be *prima facie* evidence in all courts.
10.—President or other officer to file certified copy of constitution, &c., of Newfoundland Conference of Methodist Church, list of office-bearers, &c.

SECTION
11.—"The Newfoundland Conference of the Methodist Church of Canada" incorporated as "The Newfoundland Conference of the Methodist Church," and subordinate to "The Methodist Church."
12.—"Newfoundland Conference of Methodist Church" to have same powers of holding land, &c., as former Conference had.
13.—"General Conference" and "Newfoundland Conference" merged into "The Methodist Church and Newfoundland Conference of Methodist Church" respectively, after 1st July, 1884.
14.—All lands, &c., held for benefit of Wesleyans, &c., to vest in "The Methodist Church" after July 1st, 1884.
15.—Newfoundland Conference may elect or appoint trustees of certain lands.
16.—Application of act to certain trustees of land, &c., in George street, St. John's.
17.—Position of ministers, ex officio among such trustees.
18.—Short title of act.

Whereas by the act hereinafter to be repealed, entitled "The Methodist Incorporation and Trusts Act, 1875," "The General Conference of the Methodist Church of Canada," and also "The Newfoundland Conference of the Methodist Church of Canada," were respectively constituted bodies corporate, with powers in the said act set forth: And whereas the said "General Conference of the Methodist Church of Canada" has, after conventions and agreements, ratified by delegates duly qualified to bind the several parties, bodies corporate or associations, arrived at an agreement with "The Methodist Episcopal Church in Canada," "The Primitive Methodist Church in Canada," and "The Bible Christian Church in Canada": And whereas "The Newfoundland Conference of the Methodist Church of Canada," as subsidiary and subordinate to the said "General Conference of the Methodist Church of Canada," has applied for the incorporation by act of the Legislature of the said association or parties known as "The Methodist Church," and it is desirable that the said first mentioned act be repealed and other legislation in the premises be had:

Be it enacted by his Excellency the Administrator of the Government, Legislative Council and Assembly, in legislative session convened, as follows:—

**1.** The act passed in the thirty-eighth year of the reign of her present Majesty, chapter twenty-one, is hereby repealed.

**2.** From and after the first day of July now next ensuing, the association or body of persons organized in the Dominion of Canada and known as "The Methodist Church," shall under that corporate name, be constituted a body corporate within this colony, and with all the privileges and liabilities of a corporation.

**3** The said corporation, "The Methodist Church," shall take and hold and possess all lands, tenements, money and property within this colony which have been heretofore taken, held or possessed by virtue of "The Methodist Incorporation and Trusts Act, 1875," or otherwise by "The General Conference of the Methodist Church of Canada,' or by the "The Newfoundland Conference of the Methodist Church of Canada," or to which the said conferences, or either of them, were entitled as *cetteux que trustent*, trustees or otherwise, with the like powers and liabilities, and subject to the same trusts as those upon which the said lands, tenements,

moneys and property have been heretofore held in Newfoundland for the use and benefit of churches, societies or bodies which were, before the passing of the first recited act hereby repealed, known as Wesleyan Methodist.

**4**. The said corporation, hereinafter known as "The Methodist Church," shall be capable of acquiring, taking, holding and possessing lands, tenements and hereditaments, moneys and property within this colony, by gift, devise, purchase or succession, and shall be capable of being *cestui que trust* or trustee in respect of the same, and shall have control and authority as to the establishment, management and continuance of any funds or institutions which are now or may be hereafter required for the purposes of "The Methodist Church" as if the same were the trusts referred to in the said act repealed, and shall have authority, from time to time, to make laws and regulations for the due management of such funds and institutions, not at variance with the laws of this colony, and shall be capable of suing and being sued in any of her Majesty's courts of law or equity within this colony.

**5**. Any appointment made, or other act done, or order, judgment or resolution of "The Methodist Church," passed or determined at any meeting thereof, held at any place, shall be as obligatory and binding in this colony as if done or passed within this colony, when certified by the common seal of the said corporation and under the hand of the president and secretary thereof, or of any persons acting in that capacity or presuming so to act.

**6**. A copy of any such minutes of appointment, act done, or order, judgment or resolution of "The Methodist Church," certified and signed by the president or acting president and secretary or acting secretary of "The Methodist Church," and authenticated by the common seal of the said corporation, when duly verified by a notarial certificate, certifying the signatures of the parties signing the same, and their official capacities shall be evidence of such appointment, act, order, judgment or resolution of the said corporation, "The Methodist Church," in any proceeding whatever in any court in this colony.

**7**. It shall be the duty of the president or other officer of the "Methodist Church" to cause to be filed in the office of the Colonial Secretary of this colony, within six months from the passing of this act, certified under the seal of "The Methodist Church," a copy of the basis of union, rules, regulations and discipline of "The Methodist Church," which are by this act declared to be found in the journal of a General Convention or Conference of "The Methodist Church of Canada," "The Methodist Episcopal Church in Canada," "The Primitive Methodist Church in Canada," and "The Bible-Christian Church in Canada," which general convention or conference of the said four denominations was held at Belleville, in the province of Ontario, in the Dominion of Canada, on the fifth day of September, Anno Domini 1883.

(S 1.) The said basis of union, rules, regulations and discipline are hereby declared to be the constitution, bye-laws and other

regulations upon which the said corporation, "The Methodist Church," is founded and hereby organized and certificated within this colony.

(S 2) The said basis of union, rules, regulations and discipline are hereby declared to be contained in two several publications, that is to say: in the Journal of the said General Conference published at the city of Toronto, in the province of Ontario aforesaid, by the Reverend William Briggs, in year 1883, and also in the Book of Discipline published by the said Reverend William Briggs, at Toronto aforesaid, in this present year.

**8**. It shall be the duty of the president or other officer of "The Methodist Church" to cause to be filed in the office of the Colonial Secretary of this island, within the time and under the like authentication as in the next preceding section set forth, a list of the office-bearers of "The Methodist Church," and from time to time to furnish to the said Colonial Secretary a declaration of such changes as to office-bearers of "The Methodist Church" as may from time to time take place, and such communications shall be made within three months from such change, new appointments, or succession of office-bearers of "The Methodist Church," however the same may occur.

**9**. It shall also be the duty of the president or other officer of "The Methodist Church" from time to time, under the authentication as hereinbefore provided, to cause to be filed in the office of the Colonial Secretary aforesaid, a copy of such amendments or additions to the basis of union, rules, regulations or discipline, hereby declared to be the constitution, bye-laws and other regulations of "The Methodist Church," as from time to time "The Methodist Church" may decide upon, which amendments or additions shall be forwarded to the office of the said Colonial Secretary within three months from the passing of the same, and all such amendments or additions, when published in any journal of conference, or book of discipline of "The Methodist Church," or the General Conference thereof, or a copy of any bye-law or resolution of said General Conference authenticated as hereinbefore set forth, and authenticated as aforesaid, shall be *prima facie* evidence in all courts in this colony of the contents thereof.

**10**. It shall be the duty of the president or other officer of "The Newfoundland Conference of the Methodist Church" to cause to be filed in the office of the Colonial Secretary of this colony, within six months after the passing of this act, certified under the seal of "The Newfoundland Conference of the Methodist Church," a copy of the constitution, bye-laws or other regulations by which it is governed, or made by the said conference for its guidance or governance, and also a list of the office-bearers thereof, and from time to time forward to the said office, certified as aforesaid, such alterations or additions to such constitution or bye-laws and such changes in the said office-bearers as the said conference may, from time to time, make and decide upon, which alterations and changes

shall be notified as aforesaid within three months from the time when they shall have taken place.

**11.** Subsidiary and subordinate to "The Methodist Church" the body of persons heretofore organized as a corporation in this colony, under the style of "The Newfoundland Conference of the Methodist Church of Canada," shall, on and after the first day of July now next ensuing, be known and recognized as "The Newfoundland Conference of the Methodist Church," and under the style and title of "The Newfoundland Conference of the Methodist Church," shall be organized into and constituted a body corporate within this colony, and shall have a common seal with power to break and alter the same.

**12.** The said "Newfoundland Conference of the Methodist Church" shall have and possess all powers and privileges in respect of the tenure of lands and property of every description whatsoever within this colony, which were or should have been appurtenant to the corporation heretofore known as "The Newfoundland Conference of the Methodist Church of Canada."

**13.** From and after the first day of July now next ensuing, the corporations heretofore known as the "General Conference of the Methodist Church of Canada," and the "Newfoundland Conference of the Methodist Church of Canada," shall cease to exist and are declared to be and are hereby respectively dissolved, but merging respectively into the "Methodist Church," and the "Newfoundland Conference of the Methodist Church"; the "General Conference of the Methodist Church of Canada" merging into "The Methodist Church"; "The Newfoundland Conference of the Methodist Church of Canada" merging into "The Newfoundland Conference of the Methodist Church." Until such first day of July, but not afterwards, the said "General Conference of the Methodist Church of Canada," and the said "Newfoundland Conference of the Methodist Church of Canada," shall have corporate existence and powers in this colony for all purposes pertaining to the management and conduct of their affairs, or pertaining to the winding up or dissolution of the said bodies, as if this act were not passed.

**14.** Notwithstanding anything contained in any deed or instrument by or under which any property is held in any of the districts of this colony or its dependencies, for the use, behoof or benefit of the religious community known as Wesleyans, Methodists, or Wesleyan Methodists, or for the use, behoof and benefit of the "General Conference of the Methodist Church of Canada," all such property shall, from and after the first day of July next, be held, and shall be construed to be held, for the use, behoof and benefit of the said corporation hereby constituted and organized as "The Methodist Church," and such property in this colony or its dependences shall be subject to such rules, orders, regulations and ordinances as the said corporation, "The Methodist Church," may make, or may have already made, in reference to its property or the disposition thereof.

**15.** Notwithstanding anything contained in any such deed or instrument, as mentioned in the next preceding section, it shall be lawful for

the said "Newfoundland Conference of the Methodist Church," subject to its regulations, and subject as far as possible to the mode of selection prescribed by such deeds or instruments, and subject also to the discipline of "The Methodist Church," to elect or appoint, or approve of the election or appointment of any number of trustees not exceeding twenty-one, to execute the trusts contained in any such deed or instrument; and upon the election, appointment or approval as aforesaid, of the said conference, such trustees and their successors, to be in like manner appointed, shall have all the powers and authorities, legal and equitable, that they might or could have had if they had been nominated or appointed under the said deeds or instruments.

**16**. The provisions of this act shall apply to certain persons named as trustees in an indenture of lease, dated the tenth day of January, Anno Domini 1873, conveying certain land and premises situate in George street, in the town of Saint John's, upon which a Methodist church has been erected, and to the successors of such trustees, and such trustees and their successors shall be construed to hold the said land and premises as trustees for the benefit of the said corporation, "The Methodist Church."

**17**. The ministers of "The Methodist Church," and of "The Newfoundland Conference of the Methodist Church," shall have *ex officio* among such trustees such position as may be accorded them by any of the rules, orders, resolutions or regulations, which have been made or adopted, or may hereafter be made or adopted by the said corporation, "The Methodist Church," or by the "Newfoundland Conference of the Methodist Church," for the government and discipline of the members of such bodies, or for the disposition of the property thereof; and such rules, orders, resolutions or regulations, shall confer upon such ministers all such powers and authorities, legal and equitable, as they might or could have had if they had been nominated and appointed upon the creation of the original trusts.

**18**. This act may be known and cited as "The Methodist Church Incorporation Act, 1884."

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# 40 VIC., CAP. 17.

## An Act for the more effectual transfer of certain Church of England properties to the Diocesan Synod of Newfoundland.

[PASSED 26TH APRIL, 1877.]

SECTION
1.—Interests in property vested in Synod.
2.—Synod may change disposition of property and sell.
SECTION
3.—Definition of Purposes of Church of England.
4.—Short title.

Whereas the management of the affairs of the Church of England in Newfoundland is vested in the Incorporated Body called the Diocesan Synod of Newfoundland: And whereas the lands and property mentioned in the Schedule to this Act annexed, and also other lands, funds and properties, are variously held in the name of the Bishop of Newfoundland,

and the Bishop and his Successors in Office, his heirs, executors, administors and assigns, or in the name of Trustees, or of the Parson or Clergyman in charge for the time being, or generally for the use of the members of the Church of England, or in some other manner implying a use for Church of England purposes: And whereas also, by the last Will and Testament of the late Bishop of Newfoundland, the Right Reverend EDWARD FEILD, D D., certain properties held by him or in his name or otherwise, are devised and bequeathed to the said Diocesan Synod of Newfoundland, upon certain trusts for Church of England purposes therein specified: And whereas by the said will it is provided that none of the last-named properties shall be sold or otherwise alienated without the formal written consent of the Bishop of the Diocese for the time: And whereas the present Bishop, the Right Reverend JAMES B KELLY, D. D., has given such consent so as to enable this Act to be passed; and whereas it is expedient to provide that gifts, conveyances, devises and bequests, which may be hereafter made or intended *bona fide* for the purposes of the Church of England in Newfoundland, should vest in the said Synod (unless by express terms they are not so to vest); and whereas it is also expedient to provide for changing or modifying the disposition and application of any lands, funds or other property such Synod now hold or may hereafter hold, so long as the same be for the purposes of the Church of England in Newfoundland, and that the said Synod may be enabled absolutely to sell or otherwise dispose of land or other property, and apply the proceeds, in the place of the properties so disposed of, for the purposes of the Church of England in Newfoundland.

Be it therefore enacted by the Governor, Legislative Council and Assembly, in legislative session convened, as follows:—

**1.** The right and title of the said parties so holding, and of the said trustees, and of the *cestuis que trustent* in all land and property mentioned in the schedule to this act annexed, and also in other lands, funds, and property hereinbefore mentioned, as being held variously for said Church of England purposes, and also all lands, funds, and other property devised and bequeathed by the will of the said EDWARD FEILD, and any lands, funds, and other property which may be hereafter devised, bequeathed, given or conveyed in manner aforesaid, are hereby declared to be and are and shall be vested in the Diocesan Synod of Newfoundland.

**2.** The said Diocesan Synod of Newfoundland shall have power to change and modify the disposition and application of any lands, funds or other property as aforesaid, and absolutely to sell and convey (freed from any trusts on the part of the purchaser) any lands and other property of said Synod, and apply the moneys derived therefrom to the purposes of the Church of England.

**3.** The term "purposes of the Church of England," under this act, shall include the educational as well as the religious purposes of the said Church of England in Newfoundland

**4.** This act shall be cited as the "Diocesan Synod Property Act, 1877."

SCHEDULE.

| LOCALITY OF PROPERTY. | DATE OF CONVEYANCE. | BY WHOM CONVEYED. |
|---|---|---|
| South Side, St. John's | Nov. 30th, 1849 | The Crown |
| Where College stands | June 17th, 1857 | Samuel Gordon |
| Gower Street | June 14th, 1853 | Young's Estate |
| Gower Street | Nov. 30th, 1858 | Young's Estate |
| St. John's, Forest Road | June 27th, 1848 | The Crown |
| St. John's, Forest Road | Jan'y 25th, 1849 | P. W. Carter |
| St. John's, King's Bridge Road | April 26th, 1871 | Henry Renouf, Chairman of Board of Works |
| St. John's, Military Road | July 11th, 1871 | Ditto. |
| King's Bridge Road | Dec. 1st, 1848 | The Crown |
| South Side (Parsonage) | March 8th, 1854 | James McLoughlan |
| South Side (Glebe) | Oct'r 3rd, 1835 | The Crown |
| Near Ft. Townshend (Glebe) | July 10th, 1813 | The Crown |
| Back of Fort Townshend (Glebe) | Sept. 27th, 1813 | The Crown |
| King's Bridge Road (late Captain Spearman's) | Jan'y 18th, 1876 | G. T. Rendell, Admr. |
| King's Bridge Road | Oct'r 7th, 1850 | The Crown |
| Near Long Pond | Oct'r 18th, 1862 | The Crown |
| King's Bridge Road | April 10th, 1847 | Edward Coaker |
| King's Bridge Road | May 7th, 1867 | Edward Coaker |
| Holloway Street (Glebe) | Oct'r 3rd, 1835 | The Crown |
| West side Torbay Road<br>Portugal Cove Road<br>South side Windsor Lake<br>North side of Topsail Road | Nov. 26th, 1840 | The Crown |
| Forest Road | June 27th, 1849 | Brooking and others |
| Gower St. (Sunday School) | March 1st, 1882 | Walter Baine's Estate |
| King's Bridge Road (Jersey Lodge) | Dec. 30th, 1854 | E. M. Archibald |
| Rear of Fort Townshend | Nov. 26th, 1858 | The Crown |
| North side Gower Street | May 7th, 1856 | The Crown |
| Where Cathedral stands | June 14th, 1844 | C. F. Bennett and others |
| Near Ft. William (Brewery) | Dec. 4th, 1851 | G. T. Brooking and others |
| Near Ft. William (Brewery) | July 21st, 1851 | G. T. Brooking and others |
| Flahavan's Lane | ..... | Sawyer's Estate |
| Pouch Cove | June 16th, 1849 | Thomas Harding |
| Pouch Cove | May 23rd, 1848 | B. G. Garrett |
| Pouch Cove | Oct'r 30th, 1875 | F. and J. Sullivan |

SCHEDULE—(Continued.)

| To whom Conveyed. | Nature of Interest. |
|---|---|
| Right Reverend Edward Feild, D D. | Freehold. |
| Edward Feild, D. D., Lord Bishop | Freehold. |
| The Lord Bishop of Newfoundland | Leasehold. |
| The Lord Bishop of Newfoundland | Leasehold. |
| The Bishop and his Successors | Freehold. |
| Edward Feild, his Heirs and Assigns | Freehold. |
| Doctor Feild, Lord Bishop of Newfoundland | Leasehold. |
| Right Reverend Edward Feild, Lord Bishop | Leasehold. |
| Edward, Lord Bishop of Newfoundland | Freehold |
| Edward Feild, his Executors, Administrators, and Assigns | Freehold. |
| F. H. Carrington, Parson of St John's, and his Successors in the Parsonage | Freehold. |
| The Protestant Minister, for the time being, of Church of St John's | Freehold. |
| The same | Freehold. |
| Edward Feild, D. D. | Freehold. |
| The Bishop of Newfoundland | Freehold. |
| The Bishop and his Successors | Freehold. |
| The Bishop of Newfoundland | Freehold. |
| The Bishop of Newfoundland | Re-lease. |
| The Parson of St. John's Church and Successors in the Parsonage or Rectory | Freehold. |
| T. F. Bridge, Parson of St. John's Church, St John's, and his Successors in the Parsonage or Rectory | Freehold. |
| The Bishop of Newfoundland | Freehold. |
| The Right Reverend Edward Feild, D. D. | Leasehold. |
| The Right Reverend Edward Feild | Freehold. |
| The Lord Bishop of Newfoundland | Freehold. |
| The Lord Bishop, John Winter and others, trustees of Church of England Asylum | Freehold. |
| The Lord Bishop and his Successors | Freehold. |
| The Lord Bishop of Newfoundland | Freehold. |
| The Lord Bishop of Newfoundland | Freehold. |
| Rev. J. Harris and his Successors, the Ministers of the Church of St. John's, and to the Church Wardens | Freehold. |
| To the use of the Members of the Church of England | Freehold. |
| To the Lord Bishop of Newfoundland | Freehold. |
| Rev. R. M. Johnson, on behalf of the Bishop of Newfoundland | Freehold. |

SCHEDULE.—(Continued.)

| Locality of Property. | Date of Conveyance. | By whom Conveyed. |
|---|---|---|
| Portugal Cove - - | Feb'y 22nd, 1853 | Thomas Harding - - |
| Portugal Cove - - | Jan'y 10th, 1852 | Patrick Slattery - - |
| Portugal Cove - - | Feb'y 22nd, 1848 | Thomas Summers - - |
| Portugal Cove - - | June 7th, 1852 | John Summerton - - |
| Portugal Cove - - | July 2nd, 1850 | James Pitts - - |
| Portugal Cove - - | March 8th, 1847 | Geo. Summerton and others |
| Portugal Cove - - | July 3rd, 1851 | R and J. Churchill - |
| Portugal Cove - - | Feb'y 22nd, 1853 | John Harding - - |
| Portugal Cove - - | Feb'y 22nd, 1853 | Henry Harding - - |
| Portugal Cove - - | Feb'y 22nd, 1853 | Hy. Sam'l & Robt. Harding |
| Portugal Cove - - | Jan'y 8th, 1848 | Henry Harding - - |
| Portugal Cove - - | Jan'y 24th, 1848 | James Pitts - - |
| Portugal Cove - - | April 10th, 1861 | Ann Bradbury - - |
| Belle Isle - - - | June 15th, 1850 | Henry Norman - - |
| Lance Cove, Belle Isle - | Feb'y 3rd, 1848 | Edward Kennedy - - |
| Lance Cove - - | August 7th, 1843 | Wm. Pitts and others - |
| Petty Harbor - - | March 8th, 1873 | Richard Bully - - |
| Petty Harbor - - | Feb'y 24th, 1865 | William Chafe - - |
| Torbay - - - | Feb'y 16th, 1822 | The Crown - - |
| Near Bay Bulls - - | March 19th, 1874 | David Chafe - - |
| Near Bay Bulls - - | Jan'y 15th, 1864 | The Crown - - |
| Aquaforte - - - | Dec. 30th, 1856 | Anna Winsor - - |
| Aquaforte - - - | June 7th, 1844 | Robert Bowden - - |
| Renews - - - | April 7th, 1845 | Robert Evans - - |
| Harbor Grace - - | ..... | The Crown - - |
| South side Harbor Grace - | June —, 1875 | John Godden - - |
| South side of Harvey street, Harbor Grace - - | June 12th, 1875 | John Shepherd - - |
| South side of Harvey street, Harbor Grace - - | June 12th, 1875 | Joseph Lilly - - |
| South side Harbor Grace - | May 21st, 1873 | The Crown - - |
| South side of Harvey street, Harbor Grace - - | March 24th, 1875 | Solomon Shepherd - - |
| Bay Roberts - - | July 3rd, 1847 | Rev. R. T. Lowell - - |
| Bay Roberts - - | Jan'y 19th, 1855 | The Crown - - |
| Bay Roberts - - | June 1st, 1842 | Stephen O. Pack - - |
| Bay Roberts - - | July 9th, 1845 | Rev. R. T. Lowell - - |
| Port-de-Grave - - | May 27th, 1873 | Rev. J. C. Harvey - - |
| Long Beach, Port-de-Grave | Oct. 18th, 1845 | John Daw - - |
| Port-de-Grave - - | May 31st, 1876 | ..... |
| Port-de-Grave - - | July 11th, 1847 | Thomas Martin - - |
| Ship Cove - - | Dec. 13th, 1841 | John Daw and others - |
| Bishop's Cove - - | Nov. 11th, 1874 | Israel Gosse - - |

SCHEDULE—(Continued.)

| To whom Conveyed. | Nature of Interest. |
|---|---|
| To The Lord Bishop of Newfoundland - - - | Freehold. |
| Rev. W. Gray, M. A. - - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop of the Diocese, in trust - - - | Freehold. |
| Rev. W. Gray, on behalf of the Lord Bishop of Newfoundland | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop of Newfoundland and his Successors - - | Freehold. |
| The Lord Bishop of Newfoundland and his Successors - | Freehold. |
| To use of Lord Bishop of Nfld., his Successors and Assigns - | Freehold. |
| The Bishop, his Successors and Assigns - - - | Freehold. |
| The Bishop and his Successors in trust for the Mission - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop, his Successors and Assigns - - - | Freehold. |
| The Bishop of Newfoundland and his Successors for the use of the Church of England - - - | Freehold. |
| The Lord Bishop of Newfoundland - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| For use of the Established Church of England - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop, his Heirs and Successors - - - | Freehold. |
| John Burt, Thomas Ridley and others - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop, his Successors and Assigns - - - | Freehold. |
| The Right Reverend Edward Feild, D. D. - - | Freehold. |
| The Bishop and his Successors, in trust - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| Aubrey George, Lord Bishop of Newfoundland - - | Freehold. |
| The Bishop of Newfoundland and his Successors - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop of Newfoundland and his Assigns - - | Freehold. |
| The Lord Bishop of Newfoundland - - - | Freehold. |
| The Right Reverend Edward Feild, D. D. - - | Freehold. |
| Aubrey George, Lord Bishop of Newfoundland - - | Freehold. |
| The Bishop of Newfoundland and his Successors - - | Freehold. |

SCHEDULE.—(Continued.)

| Locality of Property. | Date of Conveyance. | By whom Conveyed. |
|---|---|---|
| Bixly Hill, near Bishop's Cove, | July 10th, 1862 | The Colonial and Continental School Society |
| Bareneed | April 13th, 1860 | Thomas Martin |
| The Dock, Bareneed | June 1st, 1842 | Stephen O. Pack |
| Bryant's Cove | May 23rd, 1854 | Ann Janes and others |
| Bryant's Cove | Jan'y 21st, 1854 | George W. Hierlihy |
| Spaniard's Bay | Nov. 20th, 1857 | Vokey and others |
| Spaniard's Bay | June 29th, 1846 | Joseph Griffin |
| Big Pond, Spaniard's Bay | April 19th, 1873 | The Crown |
| Spaniard's Bay | April 8th, 1847 | The Crown |
| Spaniard's Bay | Aug. 22nd, 1842 | Wm. Hudson and others |
| Northern Gut | Dec. 29th, 1868 | The Crown |
| Upper Island Cove | Aug. 19th, 1858 | Bryan Byrne |
| Brigus | April 3rd, 1873 | R. J. C. Leamon |
| Do. | Aug. 2nd, 1873 | John Leamon |
| Coley's Point | Nov. 25th, 1852 | Robert Grosvenor |
| Carbonear | Nov. 29th, 1845 | The Crown |
| Carbonear | Sept. 13th, 1842 | Stephen O. Pack |
| Near Long Pond, S. Shore | Oct. 18th, 1862 | The Crown |
| Upper Gully | Sept. 24th, 1864 | Charles Coates |
| Bareneed | Oct. 8th, 1860 | John Richards and others |
| Topsail | Jan'y 29th, 1848 | The Crown |
| Topsail | April 15th, 1861 | Mrs. Johnson |
| Topsail | May 15th, 1866 | Rev. C. Palairet |
| Topsail | April 15th, 1861 | Mrs. Johnson |
| Topsail | May 27th, 1863 | George Smith |
| Spout Cove | Oct. 21st, 1848 | John Trickett |
| Bear's Cove, near Bay-de-Verds | Jan'y 7th, 1865 | The Crown |
| Canille, near Bay-de-Verds | Feb'y 6th, 1864 | The Crown |
| Canille Hill, Bay-de-Verds | Oct. 26th 1852 | Rev. O. Rouse |
| Brigus | June 17th, 1845 | Solomon Roberts |
| Fox Trap, South Shore | May 11th, 1866 | Rev. C Palairet |
| Port-de-Grave | March 16th, 1875 | Emma Daw |
| Bishop's Cove | Dec. 5th, 1874 | Jacob Smith |
| Dildo Cove & New Harbor | Sept. 26th, 1874 | The Crown |
| Trinity Bay, Trouty | June 13th, 1844 | Joseph Spencer |
| Trinity | Dec. 13th, 1850 | H. J. Fitzgerald |
| Trinity | May 28th, 1869 | The Crown |

SCHEDULE—(Continued.)

| To whom Conveyed. | Nature of Interest. |
|---|---|
| The Bishop of Newfoundland - - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| Aubrey George, Lord Bishop of Newfoundland - - | Freehold. |
| The Bishop of Newfoundland - - - - | Freehold. |
| The Bishop of Newfoundland - - - - | Freehold. |
| The Lord Bishop and Successors - - - | Freehold. |
| The Bishop of Newfoundland - - - - | Freehold. |
| The Right Reverend Edward Feild, D D. - - | Freehold |
| The Bishop and his Successors - - - | Freehold. |
| Bishop Spencer, his Executors, Admins. and Assigns, in trust | Freehold. |
| The Bishop, his Successors and Assigns - - - | Freehold. |
| The Rev. C. Walsh and his Assigns - - - | Freehold |
| The Rev. R. H. Taylor, his Executors, Administ'rs and Assigns | Freehold. |
| Ditto ditto ditto | Freehold |
| Rev. M. Blackmore, his Executors, Administrators, and Assigns | Freehold |
| The Bishop of Newfoundland - - - - | Freehold. |
| Bishop Spencer and his Successors - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| To the Church of England - - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold |
| The Right Reverend Edward Feild, D. D., Lord Bishop of Newfoundland and his Successors - - - | Freehold. |
| Edward Feild, D. D., Lord Bishop of Newfoundland, for Topsail Mission - - - - | Endowment Fund; Mortgage for £1000. |
| Right Reverend Edward Feild, D. D., Lord Bishop of Nfld. - | Freehold. |
| Edward Feild D. D., Lord Bishop of Newfoundland - | Freehold. |
| Right Reverend Edward Feild, D. D. - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold |
| The Bishop and his Successors - - - | Freehold |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop of Newfoundland, in trust - - - | Freehold. |
| George Carter, his Executors, Administrators and Assigns - | Freehold. |
| The Lord Bishop of Newfoundland and his Successors - | Freehold. |
| Right Reverend Edward Feild, D D., and his Successors - | Freehold |
| The Right Reverend the Lord Bishop of Newfoundland - | Freehold |
| The Bishop, his Successors and Assigns - - - - | Freehold |
| Rev. H. J. Fitzgerald, Rector of St. Paul's Church, for use of said Church - - - - - | Freehold. |
| The Lord Bishop of the Diocese and his Successors, in trust - | Freehold. |
| The Right Reverend Edward Feild, D. D., Lord Bishop, his Successors and Assigns - - - - | Freehold |

SCHEDULE.—(Continued.)

| Locality of Property. | Date of Conveyance. | By whom Conveyed. |
|---|---|---|
| Fort Point, Trinity | July 11th, 1837 | The Crown |
| Heart's Content | May 28th, 1858 | Eliza Underhay |
| Heart's Content | Oct. 1st, 1862 | Rev. George Gardiner |
| Heart's Delight | Nov. 15th, 1854 | The Crown |
| British Harbor | March 13th, 1874 | The Crown |
| Catalina | Feb'y 2nd, 1870 | The Crown |
| Heart's Delight | Oct. 28th, 1830 | Wm. Harman and others |
| Bonavista | July 16th, 1846 | Rev. T. M. Wood |
| Bonavista | Aug. 10th, 1840 | Rev. W. Bullock |
| Bonavista | Feb'y 4th, 1870 | The Crown |
| Bonaventure | March 2nd, 1874 | The Crown |
| Gooseberry Island | Dec. 11th, 1873 | The Crown |
| Bonavista | Oct. 22nd, 1853 | Mary Burton |
| Bonavista | July 16th, 1846 | John Estell and others |
| Bonavista | May 24th, 1848 | Samuel Etzell |
| Bonavista | Sept. 7th, 1850 | Samuel Mifflen |
| Bonavista | May 31st, 1849 | Jane Squires |
| Salvage | July 3rd, 1869 | The Crown |
| Salvage | May 22nd, 1863 | The Crown |
| Salvage | Jan'y 24th, 1866 | The Crown |
| King's Cove | May 21st, 1868 | David Candow |
| King's Cove | April 25th, 1856 | William Brown |
| King's Cove | May 8th, 1855 | John Coffin |
| King's Cove | June 15th, 1855 | William Hancock |
| King's Cove | Nov. 11th, 1854 | The Crown |
| King's Cove | Nov. 11th, 1854 | The Crown |
| Fair Island, Greenspond | Sept 8th, 1846 | ..... |
| King's Cove | Jan'y 12th, 1870 | The Crown |
| Greenspond | Sept. 17th, 1849 | Rev. J. Gilchrist |
| Musgrave Town | Jan'y 25th, 1870 | The Crown |
| Pool's Island | Sept. 19th, 1849 | Rev. J. Gilchrist and others |
| Twillingate | July 3rd, 1845 | Rev. T. Boone and others |
| Twillingate | Nov 2nd, 1868 | The Crown |
| Twillingate | Aug. 26th, 1846 | Rev. T Boone and others |
| Tilt Cove | Jan'y 30th, 1874 | C. F. Bennett and others |
| Exploits, Burnt Island | March 2nd, 1874 | The Crown |
| Moreton's Harbor | March 2nd, 1874 | The Crown |
| Moreton's Harbor | Aug. 28th, 1846 | Act of Appropriation by |

SCHEDULE—(Continued.)

| To whom Conveyed. | Nature of Interest. |
|---|---|
| The Right Reverend Edward Feild, D. D., Lord Bishop, his Successors and Assigns | Freehold. |
| The Rev. H. Petley, his Heirs and Assigns, in trust for the Mission | Freehold. |
| The Bishop, his Heirs and Successors | Freehold. |
| The Bishop and his Successors | Freehold. |
| The Right Reverend Edward Feild, D. D., in trust | Freehold. |
| The Bishop, his Successors and Assigns | Freehold. |
| The Archdeacon of Newfoundland, in trust | Freehold. |
| Edward, Lord Bishop of Newfoundland and his Successors | Freehold. |
| The Bishop of Newfoundland and his Successors | Freehold. |
| The Bishop, his Successors and Assigns | Freehold. |
| The Bishop, his Successors and Assigns | Freehold. |
| The Bishop, his Successors and Assigns | Freehold. |
| The Bishop and his Successors | Freehold. |
| The Bishop and his Successors | Freehold |
| The Rev'd B. Jones, his Executors, Administrators and Assigns | Freehold. |
| The Rev. B. Jones | Freehold. |
| The Rev. B. Jones | Freehold. |
| The Bishop, his Successors and Assigns | Freehold. |
| The Bishop and his Successors | Freehold. |
| The Bishop and his Successors | Freehold. |
| The Bishop and his Successors | Freehold. |
| The Bishop, in trust for the Clergyman at King's Cove | Freehold. |
| The Bishop and his Successors | Freehold. |
| The Bishop and his Successors | Freehold. |
| The Right Rev. Edward Feild, D. D., Bishop of Newfoundland, his Heirs and Assigns | Freehold. |
| The Right Rev. Edward Feild, D. D., Bishop of Newfoundland, his Heirs and Assigns | Freehold. |
| The Bishop in trust for inhabitants of Fair Island | Freehold. |
| The Bishop, his Successors and Assigns | Freehold. |
| The Bishop and his Successors, in trust | Freehold. |
| The Lord Bishop and his Successors, in trust | Freehold. |
| The Bishop and his Successors | Freehold. |
| The Bishop of Newfoundland and his Successors | Freehold. |
| The Right Reverend Edward Feild, D. D., Lord Bishop, his Successors and Assigns | Freehold. |
| The Bishop of Newfoundland and his Successors | Freehold. |
| The Bishop of Newfoundland and his Successors | Freehold. |
| The Right Reverend Edward Feild, D. D, in trust | Freehold. |
| The Right Reverend Edward Feild, D. D., in trust | Freehold. |
| The Lord Bishop of Newfoundland | Freehold. |

SCHEDULE.—(Continued.)

| Locality of Property. | Date of Conveyance. | By whom Conveyed. |
|---|---|---|
| Fogo | March 15th, 1869 | James Rielly |
| Starve Harbor | Oct. 10th, 1867 | The Crown |
| Tizzard's Harbor | Aug. 28th, 1846 | John Forward |
| Burin | June 3rd, 1853 | The Crown |
| Lamaline | Sept. 1st, 1854 | Stephen Pack |
| Burin | Sept. 21st, 1849 | Thomas Gorman |
| Port-aux-Bras, Burin | June 1st, 1853 | The Crown |
| Spencer's Cove, Hr. Buffett | Oct 1st, 1859 | William Brown |
| La Poile | Sept. 6th, 1848 | Appropriated by the Bishop |
| La Poile | Sept. 5th, 1848 | Appropriated by the Bishop |
| Harbor Briton | Sept. 20th, 1848 | Thos. Newman and others |
| Harbor Briton | April 2nd, 1869 | The Crown |
| Harbor Briton | Oct. 7th, 1854 | Newman and others |
| Brunette Island | April 17th, 1855 | Geo. Snelgrove and others |
| Channel | June 29th, 1858 | The Crown |
| Port-aux-Basques | June 26th, 1855 | John Keating |
| Belloram | Aug. 18th, 1846 | Samuel Cluet |
| Belloram | ..... | John Cluet |
| Rose Blanche | July 8th, 1871 | The Crown |
| Burgeo | Aug. 13th, 1851 | Rev. W. K. White |
| Upper Burgeo | April 12th, 1844 | Wm. Anderson and others |
| Upper Burgeo | Aug. 16th, 1845 | Appropriated by the Bishop |
| Upper Burgeo | April 13th, 1844 | Wm. Anderson and others |
| Lower Burgeo | April 16th, 1844 | Appropriated by the Bishop |
| Lower Burgeo | Aug. 16th, 1844 | John B. Cox and others |
| Hermitage Bay | June 19th, 1854 | The Crown |
| Hermitage Cove | Sept. 21st, 1846 | John Rose and others |
| Hermitage Cove | Nov. 29th, 1869 | The Crown |
| Rencontre | Nov. 23rd, 1874 | J. Watkins |
| Brunette Island | July 16th, 1855 | P. R. Snelgrove and others |
| Forteau | Oct. 7th, 1850 | C. F. Bennett and others |
| Battle Harbor | Aug. 5th, 1848 | James Allan and others |
| Seals Island | June 6th, 1855 | William Donnelly |
| Sopp's Island | July 9th, 1865 | Luke Pittman and others |
| River Head | July 11th, 1865 | Luke Gale |
| Seal Cove | July 16th, 1865 | Joseph Osborne |
| Wiseman's Cove | July 10th, 1865 | Rebecca Jacob and others |

SCHEDULE—(Continued.)

| To whom Conveyed. | Nature of Interest. |
|---|---|
| The Right Reverend Edward Feild, D. D., his Heirs, Executors, Administrators and Assigns - - - | Freehold. |
| The Bishop, his Successors and Assigns - - - | Freehold. |
| The Bishop of Newfoundland, in trust - - - | Freehold. |
| The Bishop, his Heirs and Assigns - - - | Freehold. |
| The Bishop and his Successors in Office - - - | Freehold. |
| The Bishop and his Successors in Office - - - | Freehold. |
| The Right Reverend Edward Feild, D. D., Lord Bishop of Newfoundland - - - - | Freehold. |
| To the Bishop of Newfoundland and his Successors - | Freehold. |
| The Resident Missionary of La Poile - - - | Freehold. |
| Ditto ditto - - - | Freehold. |
| The Bishop and his Successors, in trust - - - | Freehold. |
| The Bishop, his Successors and Assigns - - - | Freehold. |
| The Right Reverend Edward Feild, D. D., Lord Bishop of Newfoundland . - - - | Freehold. |
| The Lord Bishop of Newfoundland - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| Joshua Duval, in trust for the Mission at Channel - - | Freehold. |
| Thomas P. Polden, acting for the Bishop and his Successors - | Freehold. |
| The Bishop and his Successors, in the See - - | Freehold. |
| The Right Reverend Edward Feild, D. D., Lord Bishop of Newfoundland - - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| ... ... ... ... ... ... ... ... ... ... ... ... ... | Freehold. |
| The Lord Bishop of Newfoundland - - - | Freehold. |
| ... ... ... ... ... ... ... ... ... ... ... ... ... | Freehold. |
| The Bishop and his Successors for the benefit of the Church of England - - - - - | Freehold. |
| The Bishop of Newfoundland and his Successors - - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Right Reverend Edward Feild, D. D., Lord Bishop of Newfoundland - - - - | Freehold. |
| The Right Reverend Edward Feild, D. D., his Executors, Administrators and Assigns - - - | Freehold. |
| The Lord Bishop - - - - - | Freehold. |
| The Bishop of Newfoundland and his Successors - - | Freehold. |
| The Bishop, in trust - - - - | Freehold. |
| Edward Feild, D. D., Lord Bishop of Newfoundland - | Freehold. |
| The Bishop and his Successors - - - | Freehold. |
| The Bishop of Newfoundland and his Successors - - | Freehold. |
| The Lord Bishop of Newfoundland, in trust - - | Freehold. |
| The Bishop of Newfoundland and his Successors - - | Freehold. |

# 40 VIC., CAP. 18.

## An Act for the Incorporation of the Presbyterian Body in Newfoundland, and for other purposes.

[Passed 26th April, 1877.]


Section
1.—Incorporation of "The Presbytery of Newfoundland," subject to Synod of Maritime Provinces and General Assembly of Presbyterian Church in Canada.
2.—Moderator to file certified copy of Constitution in Colonial Secretary's Office.
Section
3.—Trustees of property of United Presbyterian Congregations to hold property subject to trusts declared.
4.—Short title.


Be it enacted by the Governor, Council and Assembly, as follows:—

**1.** From and after the passing of this Act, the religious denomination or body in Newfoundland, called Presbyterians, who have been organized into an association or body under the name of "The Presbytery of Newfoundland," under the jurisdiction of the Presbyterian Synod of the Maritime Provinces, and the General Assembly of the Presbyterian Church in Canada, and their successors, shall be organized into and constituted as a body corporate within this colony, having perpetual succession, and being known and recognized by law by the said name, and shall have full power to hold lands and property in this colony, either as having the legal estate therein, or as *cestuis que trust*, for the use of the said Presbyterian Body, or any portion thereof, and shall have power to do such other acts as pertain to a corporation, and shall have a common seal, with power to break and alter the same.

**2.** It shall be the duty of the Moderator of the said "Presbytery of Newfoundland," to cause to be filed in the office of the Colonial Secretary of this colony, within six months from the passing of this Act, certified under the seal of the said corporation, a copy of the constitution, bye-laws or other regulations by which it is governed, or which have been made by the said corporation for its guidance or governance, and also a list of the office-bearers thereof, and from time to time to forward to the said office, certified as aforesaid such alterations or additions to the said constitution, bye-laws or regulations, and such changes in the office-bearers as the said corporation may decide upon, which alterations and changes shall be notified, as aforesaid, within three months from the time when they shall have taken place.

**3.** And whereas by resolutions adopted at meetings of the two congregations of said Presbyterian body in St. John's, for a union of the said congregations, certain Trustees were appointed to hold certain lands and other property for the use and benefit of the said united congregations in

St. John's: Be it therefore enacted that the said Trustees and their successors, shall hold and dispose of the said lands and property, subject to such trusts and conditions as may have been or may hereafter be declared or set forth in or by any resolution, note or order of the said united congregation, or any deed, instrument or writing, executed or delivered in pursuance thereof: Provided that the trusts and purposes under and for which the said Trustees shall hold the said properties, shall be subject to the constitution, bye-laws and regulations of the said "Presbytery of Newfoundland," and the said Synod and General Assembly, and that, notwithstanding anything contained in any such resolution, deed, instrument or declaration of trust as aforesaid, the said lands and property shall not be held or applied to or for any uses, trusts or purposes, inconsistent with the said constitution, bye-laws or regulations of the said Presbytery and its said governing bodies.

**4.** This Act may be cited as "The Presbyterian Incorporation Act, 1877."

# 4 Wm. IV., (2nd Sess.) CAP. 22.

## An Act to Incorporate the Saint John's Mechanics' Society.

[Passed 12th June, 1834.


Section 1.—Officers of the society constituted a body corporate. Style and title. Power to make bye-laws, &c.

Section 2.—How property may be acquired or disposed of.

Section 3.—Election of new officers to take place annually, on the 3rd March.


Whereas divers mechanics and tradesmen, being inhabitants of the town of Saint John's in this colony did, in the year one thousand eight hundred and twenty-seven, establish and form themselves into an association or society, under the name and title of "The Saint John's Mechanics' Society," for the purpose of affording subsistence to such sick members as might need support, and for other good and wholesome purposes; since which said period the said society has been joined by numerous additional members. And whereas the members of the said society are desirous, for the better regulation thereof, that the same shall be rendered a body corporate and politic, with perpetual succession, as hath been signified and prayed for by the society; Be it therefore enacted, by the Governor, Council and Assembly of Newfoundland, in Parliament assembled, and by authority of the same, that Patrick Kough, Esquire, of St John's, builder, president of the said Saint John's Mechanic's Society; Patrick Kelly, of Saint John's, cooper, vice-president of the said society; Patrick Kielty, of Saint John's, cooper, first assistant of the said society; James Tubrid, of Saint John's, cooper, second assistant of the said society; Robert Wylie, of St. John's, cooper; John Culleton, of Saint John's, baker, and Patrick McCarthy, of Saint John's, carpenter, treasurers of the said society; and Thomas McNamara, of Saint John's, cooper, secretary of the said society; and their successors in office for ever (which said successors shall be elected and chosen in the way and manner hereinafter mentioned) shall be, and they are hereby constituted and declared to be, a body corporate and politic, in name and deed, under the name and style of "The Saint John's Mechanics' Society," and the same shall be a perpetual corporation, and shall have a common seal, with power to change and alter the same from time to time at pleasure, and shall be in law capable of suing and being sued, pleading and being impleaded, defending or being defended, answering or being answered unto, in all courts of judicature, in all manner of actions, suits and causes whatsoever; and also, of contracting and being contracted with, relative to the funds of the said corporation, and the business and purposes for which it is hereby constituted; and also, by and with the consent of the members of the said society, or a majority of them, may make, establish, and execute, alter or repeal such bye-laws, rules and regulations, not contrary to the laws of this colony, or the provisions of this act, as the said corporation and members of the said society, may deem necessary and expedient for the better regulation and management thereof,

**2**. And be it further enacted, that it shall and may be lawful for the said corporation to purchase any real or personal estate, or to accept, hold and possess such as may be gratuitously given, granted, devised or bequeathed for the use and benefit of the said corporation and society, which shall not altogether exceed the yearly value or income of eight hundred pounds sterling; and that the said corporation shall and may sell, alienate or otherwise dispose of the said real or personal estate, so purchased, granted, devised or bequeathed, from time to time, as they shall or may see fit.

**3**. And be it further enacted, that on the third day of March in each and every year, a general meeting of the members of the said Saint John's Mechanics' Society shall take place, when such members, or a majority of the members who may may be present, shall elect and choose a president, a vice-president, a first assistant, a second assistant, three treasurers and a secretary of the said society; who shall, for the year next ensuing such choice or election, and until a new election shall take place, be the members of the said corporation under the provisions hereinbefore made and prescribed.

# 17 VIC., CAP. 2.

## An Act to Incorporate a Company under the Style and Title of "The New York, Newfoundland, and London Telegraph Company."

[Passed 15th April, 1854.]


Section
1.—Peter Cooper and other shareholders created a corporation by the name of the "New York, Newfoundland and London Telegraph Compnay."
2.—Capital, fifteen hundred thousand dollars in shares of one hundred dollars each. Proviso.
3.—Upon subscription of two thousand five hundred shares, company to go into operation. Peter Cooper, Moses Taylor, and others, to be the first directors thereof till the first Monday in May, 1856, when, and in every succeeding year, stockholders shall meet to review proceedings, elect directors, &c.
4.—Power of directors to appoint officers, manage the affairs of the company, &c.
5.—Shares to be personal property, and liable to attachment and execution. Mode of proceeding thereon, &c.
6.—The company may construct a main line of telegraph from St. John's to Cape Ray; and from St. John's to Trepassey; and also branch lines, not to interfere with the St. John's and Carbonear line. Proviso.
7.—Lines of telegraph may be erected along highways, &c., lands entered, compensation therefor, mode of ascertaining same by reference, &c.
8.—Governor to have preference in sending messages.
9.—Penalty for interrupting use of telegraph line or works. Offender wilfully damaging works guilty of misdemeanor.
10.—Upon completion of line to Cape Ray, crown grants of land to be made to company, subject to certain conditions and reservations.
11.—Compensation, how to be made, for road to be constructed by company.
12.—Act to be void unless two thousand five hundred shares be subscribed and effective operation commenced within one year.
13.—Materials to be imported free of duty.
14.—Company to enjoy exclusive right to line upon performance of certain conditions.
15.—Provision for purchase of line by government.
16.—Directors to issue bonds in payment of property purchased, or money borrowed by the company. Government guarantees payment to holders of fifty of such bonds, of the interest thereon for twenty years.
17.—Government paying such interest, to give notice thereof to the directors, requiring them to reimburse therefor. Mode of enforcing repayment.
18.—Company to have power to construct telegraph lines between Newfoundland, Ireland, and other places. Proviso.
19.—Company may purchase property of late Newfoundland E. T. Company.
20.—Aliens may be stockholders and officers of company.
21.—Principal office of company, where to be held.
22.—On Atlantic submarine wire being laid down, Government to make further grant of land to company.
23.—Statement of affairs of company to be transmitted annually to Governor.
24.—Public act.


Whereas it is deemed advisable to establish a line of telegraphic communication between America and Europe, by way of Newfoundland; and whereas the parties hereinafter named have associated for the purpose of forming a company with capital or joint stock of three hundred and twelve thousand five hundred pounds sterling, or one million five hundred thousand dollars, with the privilege of extending it, as hereinafter provided.

Be it therefore enacted by the Governor, Council, and Assembly, in legislative session convened, as follows:—

1. That Peter Cooper, Moses Taylor, Cyrus W. Field, Marshall O. Roberts, Chandler White, Frederic N. Gisborne, and all other persons who shall, pursuant to this act, become proprietors of shares for the purpose of establishing a company to carry into effect the provisions of this

act, and their successors and assigns, shall be, and they are hereby created, a body corporate and politic, by the name of the New York, Newfoundland and London Telegraph Company, and by that name may have a common seal, and sue and be sued, and may hold lands, tenements and hereditaments, goods, chattels, and things in action, and let, sell, assign and convey the same, or any part thereof, and do all other acts or things within the scope or for the purposes contemplated by this act, which corporations may of right do.

**2.** The capital or joint stock of the said company shall consist of the said sum of fifteen hundred thousand dollars in shares of one hundred dollars each, with the privilege to the said company, by resolution of the board of directors, to increase hereafter the capital stock from time to time; but not to an amount exceeding *three millions of dollars;** Provided always that no assignment or transfer of any share shall be valid or effectual until such transfer be entered and registered in a book to be kept for that purpose, and provided also, that whenever any stockholder shall transfer in manner aforesaid all his stock or shares in the said company to any person, such stockholder shall cease to be a member of said corporation.

**3.** So soon as twenty-five hundred shares of the capital stock shall be subscribed the company shall go into operation, and the said Peter Cooper, Moses Taylor, Cyrus W. Field, Marshall O. Roberts, and Chandler White, shall be the first directors of the company, who shall continue in office until the first Monday in the month of May, which will be in the year one thousand eight hundred and fifty-six, and until their successors are appointed; on which said Monday of May, and on the first Monday in May in every succeeding year, there shall be a general meeting of the stockholders in the city of London, or in the city of New York, or in the town of St. John's, in this island, as the directors may from time to time determine, fourteen days' notice thereof having been given in three public newspapers, viz., the *London Gazette*, the *Royal Gazette* of this island, and a newspaper published in New York; at which meeting the board of directors for the past year shall exhibit a full statement of the affairs of the company, and the meeting shall thereupon proceed to examine the accounts, elect a board of directors for the ensuing year, amend or annul any bye-law, or make any new bye-law, and transact such other business as may then be brought before them. And any stockholder owning five shares of the capital stock of the company shall be eligible to be a director. Special meetings of the stockholders may also be called by the president or board of directors, by notice published once a week, for six successive weeks in three newspapers published as above mentioned; and at all meetings of the stockholders, each stockholder may vote in person or by proxy on production of sufficient written authority therefor, each share being entitled to one vote.

**4.** The directors of the said company for the time being shall have power to appoint a president, vice-president, treasurer, secretary, and other

*Increased to six millions of dollars by 30 Vic., cap. 17.*

officers and servants of the said company; to prescribe their powers and duties, and fix their salaries; to fill vacancies in the board of directors (occurring by death, resignation or otherwise,) until the next general election of directors; to receive subscriptions to the capital stock from time to time in such amounts and from such persons as they shall determine, and to require payment of the same at such time and in such manner as they shall deem best; and to make bye-laws not repugnant to the laws of this colony and Great Britain, pay dividends, and generally to regulate and manage the affairs of the said company; and any three of such directors shall be a quorum for the transaction of business.

5. The shares in the capital stock of the said company shall be deemed personal property, and shall be liable to attachment and execution as other personal property, and the process or warrant in such case shall be served on the president, vice-president, or director or manager of the said company resident in Newfoundland, and such service shall bind the shares of any stockholder to the extent of such attachment or execution issued against him from the time that notice thereof shall be actually given at the principal office of the said company in New York, or elsewhere, where the transfer of shares shall be made and registered; and for the purpose of ascertaining the number of shares held by any shareholder against whom any attachment or execution may have issued, the president, vice-president, secretary, or any director or officer of the said company, may be examined in like manner as any third person having in his possession any goods, moneys, debts or effects of any defendant; and upon the sale by the sheriff, or proper officer, of any such shares under execution or otherwise, the officers or agents of the said company having charge of the transfer books, shall, on production of a bill of sale from the sheriff or other proper officer, transfer to the purchaser thereof the number of shares sold under such execution or other process belonging to the defendant at the time of such notice being given at the transfer office as aforesaid, and such transfer shall be valid and effectual to all intents and purposes: Provided always that such sale shall be subject to any debt that may be due from such defendant to the said company and that no sale shall be made or judgment rendered until at least three months after such notice shall be given at the transfer office as aforesaid.

6. The said company shall construct, complete, keep in order, and operate a main or trunk line of magnetic, electric, or other telegraphs from Saint John's to or towards Cape Ray, and also from Saint John's to or towards Trepassey; and may also construct, complete, keep in order, and operate any other line or lines from any point in Newfoundland to any other point or points therein, or elsewhere as may be determined on by the company; and also branch lines connecting the said main or trunk lines with any town or village in Newfoundland: Provided always that such branch or other lines shall not interfere with the existing line of the Saint John's and Carbonear electric telegraph company, or any other lines that may be constructed between Saint John's and Carbonear by the said company. And provided also, that if at any time after ten years from the

passing of this act, any branch line to connect with any town or village aforesaid be desired by the Government of this colony, and the company shall not establish the same within twelve months after a requisition to that effect from the Governor of this colony, the Government of this colony may establish such branch line at its own expense, for local traffic only.

**7.** The company may erect or maintain their said lines of telegraph along the side of or across any public highways, bridges, water-courses, or other such places, provided they do not interfere with the public right of travelling thereon, and may enter upon any lands, or places, and survey and set off such parts thereof as may be necessary for the said lines of telegraph, and may take from any part of the ungranted and unoccupied crown lands of this colony, any posts or building materials necessary to make or repair the lines or any buildings in connection therewith, and in cases of disagreement between the company and any owner or occupier of lands which the company may take for the purposes aforesaid, or in respect to any damage done to the same, by constructing the lines through or upon the same, the company and such owner or occupier, as the case may be, shall each choose an arbitrator, which two arbitrators shall choose a third, and the decision (on the matter in difference) of any two of them in writing shall be final; and if the said owner or occupier, or the agent of the same company, shall neglect or refuse to choose an arbitrator within four days after notice in writing to him from the opposite party, or if such two arbitrators, when duly chosen, shall disagree in the choice of a third arbitrator, in any such case, it shall be lawful for the Colonial Secretary for the time being to nominate any such arbitrator, or such third arbitrator, as the case may be, who shall possess the same power as if chosen in manner above provided.

**8.** The Governments of Great Britain, of the United States, and of Newfoundland, shall respectively have, at all times, a preference over all persons, of conveying messages on the said lines of telegraph, relating to the public services of these governments respectively, and the rate of charges therefor shall not exceed the charges made to private individuals; and the said company shall at all times transmit the messages of private parties without preference or delay.

**9.** Any person wilfully interrupting the free use, by the said company, of any line of telephone established by it, or any works connected therewith, shall be subject to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered by any person informing and suing for the same, in a summary way, before one or more justices of the peace, and to be levied by a warrant of distress and sale of the offender's goods and chattels; one half of such penalty shall go to the party suing for the same, and the other half to be paid to the Receiver General for the use of the colony; and in default of goods and chattels to satisfy such warrant, every such offender shall be committed to gaol by such justice or justices for any period not exceeding one hundred days; and if any

person shall wilfully or maliciously obstruct or damage any such line, works, building, machinery, or other property connected therewith, he shall be guilty of a misdemeanor, and shall be punished by imprisonment for a period not exceeding one year, and by a fine not exceeding one thousand dollars. And every operator, agent or servant of the company, employed in the transmission or delivery of intelligence or messages shall, before he enters on the duties of his office, make oath before a judge or justice of the peace that he will not wilfully divulge the contents of any message transmitted by said company, or left with any of its operators, agents or servants, for transmission or delivery; and every person violating the said oath shall be adjudged guilty of a misdemeanor and be punished by imprisonment for a period not exceeding one year, and by a fine not exceeding one thousand dollars.

10. So soon as the said line of telegraph shall be completed from St. John's to Cape Ray, or any other point on the west coast of Newfoundland, the Governor shall, on the application of the company, from time to time, issue grants, under the great seal of this island, to the said company, of any ungranted and unoccupied wilderness land in Newfoundland, in blocks or parcels the contents of which shall not be less than three square miles, and in all not exceeding fifty square miles, subject, nevertheless, to such percentage upon the produce of mines, and to such conditions as to working thereof, within a limited period, not less than ten years, and to such conditions as to the permanent settlement in fee simple of such land by one settler to every five hundred acres so granted, within five years from the date of any such grant, and to the right of the public to construct any roads and bridges in and over the said land as now are or may hereafter be specified and defined by the laws of Newfoundland or Great Britain; and the said company shall have power to alien or dispose of the said lands, or any part or parts thereof, or to occupy, work, or use the same, or any part thereof, in any manner it may deem proper, subject to the like conditions and reservations as aforesaid. And for the purpose of preventing new claims to the prejudice of the said company, it shall be lawful for it, at any time after this act goes into operation, to signify, in writing, to the Governor, the selection of the said lands, or any part thereof, which it desires to have granted to it as aforesaid; and such lands shall thereupon be reserved for the said company until the completion of the said telegraph line as aforesaid, or until three years after the passing of this act; and all grants to the said company under this act shall be issued without any charge to them for surveys or otherwise: Provided always that nothing herein contained shall affect the provisions of the seventh and eighth sections of the act of the legislature of this colony passed in the seventh year of Her Majesty's reign, chapter one, which sections are as follows, viz.:—"That it shall and may be lawful for the Governor, or person administering the Government, from time to time, to reserve, set apart, and appropriate, such parts or portions of any unoccupied land in any of the districts of this island, or places within its government, as he may, by and with the advice and consent of the Council, deem proper and expedient to appropriate, for the purpose of erecting court houses, market

places, churches, chapels, or other places of public worship, or for the erection of school houses or for any other public use or purpose; and also such portions of unappropriated ship's room, beaches and shores, as may be deemed necessary or convenient to set apart for the general and public uses of the inhabitants within any of the districts or places aforesaid." "That it shall and may be lawful for the Governor, or person administering the Government, by and with the consent of the Council, to order the reservations of such and such portions of bogs as may be deemed necessary for the supply of manure or fuel to the public, and such and such portions of forest as may be necessary for the uses of the fishery."

**11.** So soon as an hundred miles of good and traversable bridle road eight feet wide, with bridges eight feet wide, along a line of the said intended telegraph, shall have been constructed by the said company from Saint John's towards Cape Ray, or other point on the western coast of this island, or from Saint John's to Trepassey, by way of Renews, the Governor shall draw his warrant on the Colonial Treasurer, in favor of the company for the sum of fifteen hundred pounds; and so on, at the rate of fifteen hundred pounds for every additional hundred miles of the said road, as fast as the same shall be finished, until the completion thereof to the western coast of Trepassey, and at the same rate for the last portion, if less than one hundred miles: Provided always that the whole amount to be paid for the completion of the said roads and bridges to Trepassey and the western coast shall not exceed the sum of five thousand pounds. And the company shall be bound to complete the said bridle roads and bridges to Trepassey and the western coast, for the said amount, *within two years;** and the bridle roads so constructed shall be public highways, subject to the rights of the company, which shall not be bound to keep the same in repair.

**12.** Unless twenty-five hundred shares at least of the capital or joint stock of the said company shall he subscribed, and effective operations commenced for the establishment of the said line of telegraph within one year after the passing of this act, this act and everything herein contained shall be utterly null and void.

**13.** All wires and materials required for constructing, repairing, or working the main or branch lines of telegraphs, or for connecting them or any of them with any other island, province, or country, shall and may be imported free of duty.

**14.** The corporation hereby created shall have the sole and exclusive right to build, make, occupy, take or work the said line or any line of telegraph between Saint John's and Cape Ray, or between any other points in this island (excepting only the existing line between Saint John's and Carbonear) for the full period of fifty years from the passing of this act; subject nevertheless to the right of pre-emption by the Government of this

* *Extended to last day of October, 1857, by 19 Vic., cap. 12, sec. 1.*

colony, as hereinafter provided; and during the said period of fifty years, no other person or persons, body or bodies politic or corporate, shall be permitted to construct, purchase, take, or operate, any line or lines of telegraph on this island, or to extend to, enter upon, or touch any of this island, or the coast thereof, or of the islands or places within the jurisdiction of the Government of this colony, with any telegraphic cable, wire, or other means of telegraphic communication, from any other island, country, or place whatsoever. Provided, however, that if the said line of telegraph shall not have been completed from Saint John's to Cape Ray or other point on the western coast of Newfoundland, and a communication by telegraph across Prince Edward Island or the island of Cape Breton or otherwise, established with the continent of America, within five years from the passing of this act, the exclusive privileges granted by this section shall cease.

**15** If at any time after twenty years from the passing of this act, it shall be deemed advisable by the Governor in Council that the lines of telegraph and other property of the said company shall be transferred to and vested in the Government of this island, it shall be lawful for the Governor to cause a written notice to be given to the said company, which shall be served upon the president or director, or manager in this island, which notice shall state that the Government has decided upon becoming the holder of the said lines and other property; and thereupon the Governor and the company shall each choose an arbitrator, and the arbitrators so chosen shall appraise the telegraph lines, wires, cables, apparatus, vessels, and all other property connected therewith, and if they cannot agree they shall choose a third as umpire, and if they do not make such choice, the Supreme Court shall appoint an umpire, and the appraisement of any two of them shall be taken as the true and just value of said property; and after the expiration of one year from the time the award of the arbitrators shall have been communicated to the government and the company, and after the payment made or tendered in manner hereinafter provided, all and singular the said telegraphic lines. wires, cables, apparatus, vessels, and other property so appraised, shall become the property of Her Majesty, for the benefit and public use of this island, and shall be thenceforth held free and discharged from all claims of such company or shareholders thereof, or any person whomsoever; and the government shall draw warrants upon the treasurer of this colony for the payment to such company of the amount so awarded as aforesaid, and the payments in discharge of such warrants shall be made or tendered by the treasurer aforesaid to the president and directors of the said company, or their director or manager in this island, as the Governor shall direct and appoint; but this section shall not apply to any lands granted to the said company, by virtue of the tenth and twenty-second sections of this act, nor to the proceeds thereof, or any land or property purchased with such proceeds, nor to the bonuses to be paid to the company, or to any land or property purchased with the same or any part thereof, nor to any mines or minerals, or the property connected with the management or working of such mines or minerals,

**16.**—The directors may, from time to time, by resolution, authorize and direct the issue of bonds by the said company for such sums in dollars and cents, and to such an amount in the aggregate, as the directors may deem expedient in payment for any property purchased by the said company, or for any money borrowed by it, or to negotiate and sell at public or private sale, at such price as the directors may deem satisfactory, for the purpose of raising funds for the use of the said company; and the government of this colony hereby guarantees the payment to the holders thereof of the interest, for the period of twenty years only, upon fifty of such bonds, five thousand dollars each respectively. The bonds upon which the interest is so guaranteed, to be payable by the company in twenty years in London, with five per cent. interest, payable semi-annually, and convertible into stock at its par value, according to the current rate of exchange between New York and London, at any time within ten years at the option of the holders. The bonds, of which the interest is so guaranteed, shall be registered in the office of the secretary of the colony; and such registry shall be certified by an endorsement thereon signed by the colonial treasurer and countersigned by the colonial secretary, to the effect that the payment of the interest on the same for the period aforesaid is guaranteed by the colony; and for the amount of the interest on the bonds so issued and guaranteed, the government of this island shall have by force of this act a lien upon all the telegraph lines, works and property of said company in this island and to the continent of America, in preference to all other claims. The bonds, of which the interest is so guaranteed, to be delivered to the said company as follows: ten of them when the company shall have begun to operate under this act; ten of them when the telegraph line and bridle roads before-mentioned shall have been completed from St. John's to Cape Ray, or some other point on the west coast of Newfoundland, and Trepassey; and the remaining thirty when the telegraph shall have been completed from St. John's to Prince Edward Island or the island of Cape Breton. But before the said remaining thirty bonds are delivered to the said company, they shall be offered by the company for sale at par (reckoning the rate of exchange between St. John's and London at twenty per cent. premium), to the government of this colony, or any inhabitant thereof, by notice published for three successive weeks in the *Royal Gazette* of this island; and if the said bonds or any of them be purchased by the government or any inhabitant of this colony at or before the expiration of the said three weeks, the bonds so purchased shall be delivered to the purchaser, and the par value thereof be paid to the said company in lieu of the said bonds; and in case the said company shall not think fit to receive the bonds last above mentioned within ten days after they shall be entitled to receive the same, there shall be offered for sale to the government, for the inhabitants of this colony, stock in the said company to the extent of thirty thousand pounds sterling, or one hundred and forty-four thousand dollars at par, which shall in such case be offered by advertisement in manner above mentioned.

**17.** And if it shall so happen that the government of this colony shall be called upon to pay any sum of money as interest upon the said bonds

or any of them, in pursuance of such guarantee as aforesaid, and shall actually pay such interest thereon, the Governor of the colony shall forthwith cause notice of such payment to be given to the directors of the said company, or to their director or local manager in this island, requiring the said company to refund such payment within a time (not less than three calendar months) to be limited in such notice; and if at the expiration of the time so limited such payment shall not have been refunded, the Governor of the colony shall in the name of Her Majesty, and for the public service of this colony, cause possession to be taken of the whole of the property and effects of the said company specified in the last preceding section, and retain possession thereof, and of the profits of the same, until such interest so paid by the government of this colony shall have been refunded; and in case the said company shall not within six calendar months after possession of such property and effects shall have been so taken as aforesaid, redeem the same by refunding the amount so paid, and all charges thereon (subject to an account of the rents and profits in the meantime by the government of this colony,) then and in such case it shall be lawful for the said government to sell the said property and effects by public auction at Saint John's, or New York, after three months' notice in the *London Gazette*, the *Royal Gazette* of this island, and in a newspaper published in New York, and to pay over to the said company the surplus arising from such sale after payment of all expenses, and the amount so paid as aforesaid, and reserving as a pledge a sum sufficient to purchase at six per cent. an annuity equal to the future interest so guaranteed on the said bonds: Provided that should the highest amount *bona fide* bid at such sale be insufficient to meet the amount so due, and the expenses as aforesaid, together with such sum as will purchase such annuity as aforesaid, it shall be competent to the said government to take and hold the said property and effects absolutely as their own property, in lieu of all their claims arising out of the said guarantee.

**18**. The said company shall have power to establish, construct and work a line or lines of telegraph between Newfoundland and Ireland or any other island, place or places in the Atlantic ocean, or in Europe or in the United States, and to construct, purchase and work any telegraph line or lines, or means of communication, in Canada, Prince Edward Island, Cape Breton, Nova Scotia, New Brunswick, and the United States, and in the waters adjacent to or between the said islands, provinces, or states, and between any of them and Newfoundland: Provided, however, that such consent as may be necessary shall be first obtained of the governments of said provinces and states respectively; and generally to purchase or hire any line of telegraph which may now or hereafter be constructed by any person or persons, or body or bodies politic or corporate, in the United States, or British provinces of North America, or in Europe, and to use the same for the transmission of messages and intelligence; and they may also construct, purchase, hire, or use, any steam or other vessels to aid in the acquisition or transmission of intelligence between America and Europe, or in carrying on any of the operations of the said company.

**19.** The said company may purchase from the said Peter Cooper, Moses Taylor, Cyrus W. Field, Marshall O. Roberts, and Chandler White, at such price and on such terms as may be agreed on between them and the said company, the telegraphic lines, wires, posts, insulators, cables and other property in Newfoundland, Prince Edward Island, New Brunswick, and the waters between New Brunswick and Prince Edward Island, which belonged to the late Newfoundland electric telegraph company, and which the said company sold, transferred and conveyed, to the said Peter Cooper, Moses Taylor, Cyrus W. Field, Marshall O. Roberts, and Chandler White, on the tenth day of March in the year one thousand eight hundred and fifty-four; and from the time of the transfer and conveyance thereof, executed by the said Peter Cooper, Moses Taylor, Cyrus W. Field, Marshall O. Roberts and Chandler White, to the company incorporated by this act, the said New York, Newfoundland and London Telegraph Company shall become seized and possessed of and entitled to all the said telegraph lines, wires, posts, insulators, cables, and other property, and may hold, use and dispose of the same in the same manner and with the same effect as if the company hereby incorporated had built and constructed the same after the passage of this act.

**20.** Every stockholder in the said company, whether a British subject or a citizen of the United States, or other alien, or resident in Newfoundland, the United States, or elsewhere, has and shall have equal rights to hold stock in the said company, to vote on the same, and to be eligible to office in the said company.

**21.** The place where the meetings of the stockholders and of the board of directors shall be held, and where the principal office for the transaction of the business of the company shall be established, shall be in the city of London or in the city of New York, or at St. John's, in this island, as the directors may from time to time determine; but there shall always be a director or local manager for the transaction of the necessary local business in Great Britain and the United States respectively.

**22.** So soon as the said company shall have actually established a communication across the Atlantic ocean by means of a sub-marine cable or wire from this island, the said company shall be entitled te receive from the government of this island a grant of fifty square miles of ungranted and unoccupied wilderness land, to be selected by the said company, in addition to the grants hereinbefore mentioned, and subject to the same conditions and provisos as are mentioned in the tenth section of this Act.

**23.** On the first Monday in July in each year the principal agent or manager of the said company in Newfoundland shall transmit to the colonial secretary thereof, to be laid before the Governor for the information of the Legislature, a statement of the affairs of the company, in duplicate, showing the profits of the company for the then last preceding year, with a statement of any bonds that have been converted into stock or can-

celled,—which bonds shall be returned to the secretary of the colony, and a list of the directors and stockholders to be deposited in the colonial secretary's office, for reference only.

**24**. This Act shall be deemed and taken to be a public act, and shall be judicially noticed as a public act without being specially pleaded.

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# 19 VIC., CAP. 12.

## An Act to amend the Act for the Incorporation of the New York, Newfoundland and London Telegraph Company.

[Passed 12th May, 1856.]


Section
1.—Time limited for completion of roads and bridges extended to 31st October, 1857.
2.—Company, with Governor's sanction, may substitute floating bridges or ferries for bridges required by aforesaid Act. Proviso.
3.—Company may sell shares if instalments due on the same be not paid up.
4.—Privileges of governments of British American Colonies.


Whereas by an Act passed in the seventeenth year of the reign of Her present Majesty, entitled "An Act to Incorporate a Company under the style and title of the New York, Newfoundland, and London Telegraph Company," it was among other matters therein contained, provided that the said company should within two years from the passing of the said Act be bound to complete a good and traversable bridle road eight feet wide, with bridges eight feet wide, along the line of the said intended telegraph between St. John's and Cape Ray, and between St. John's and Trepassey; and it is expedieent that the said Act should be amended in these and certain other particulars.

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

**1**. The time for the completion of the said roads and bridges shall be extended to the last day of October, which will be in the year eighteen hundred and fifty-seven.

**2**. It shall be competent for the said company, in places in which the Governor and Council may consider the change to be necessary, and not detrimental to the public service, to substitute flying or floating bridges or ferries sufficient for the passage of cattle and carriages for the permanent bridges required by the said Act: Provided that such bridges and ferries shall be constructed and maintained in such manner as the Governor in Council may consider efficient for the purpose for which they may be respectively designed.

**3.** In case any shareholder of, or a subscriber to the said company, shall not pay the instalments or payments from time to time falling due on his shares, pursuant to the provisions of the said recited Act, it shall be competent for the directors after one month's written notice to the party in default to sell such shares by private sale or public auction, and to pay as much of the proceeds thereof as may be necessary in discharge of the amount due on such shares, and to pay the surplus, if any, to the original proprietor of said shares.

**4.** The governments of British colonies in America shall have the like privileges with regard to the transmission of messages on the said line, as are provided in the said recited Act with respect to the government of this colony.

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# 20 VIC., CAP. 1.

## An Act further to amend an Act passed in the Seventeenth year of Her Majesty's Reign, entitled "An Act to Incorporate a Company under the style and title of the New York, Newfoundland and London Telegraph Company."

[PASSED 3RD MARCH, 1857.]

SECTION
1.—Power to join transatlantic submarine electric telegraph cable to the electric telegraph line passing through this island to the continent of America.
2.—Consolidation of the New York, Newfoundland and London Telegraph Company with the Atlantic Telegraph Company, limited. Powers and privileges of consolidated company.
3.—Application of this Act to Atlantic Telegraph Company incorporated, or to any other such company.
4.—Reservation of rights secured by law to the Imperial, Colonial and American Governments.
5.—Shares, &c., of consolidated or incorporated company to be liable for debts from New York, Newfoundland and London Telegraph Company.
6.—Penalty for injury to property of the company. Conviction before a Justice or Justices.
7.—Power to apprehend offender.
8.—Appropriation of fines.
9.—Protection of party arresting offender.

Whereas the New York, Newfoundland and London Telegraph Company have applied to the Legislature of this colony to amend the Act passed in the seventeenth year of Her present Majesty's reign, entitled "An Act to Incorporate a Company under the style and title of the New York, Newfoundland and London Telegraph Company"; and it is deemed advisable to grant the application:

Be it therefore enacted, by the Governor, Legislative Council and Assembly of Newfoundland, in Legislative Session convened, as follows:—

1. The said New York, Newfoundland and London Telegraph Company may by resolutions of their board of directors, certified under their corporate seal, give to the Atlantic Telegraph Company, limited, constituted in England under the provisions of an Act of the Imperial Parliament, entitled "The Joint Stock Companies' Act, 1856," the consent of the New York, Newfoundland and London Telegraph Company, that the said Atlantic Telegraph Company, limited, may extend their sub-marine cable to, and touch and enter upon this island with such restrictions and upon such terms and conditions, as may be agreed on between the said two companies, and upon such consent, and subject to such restrictions, terms and conditions, the sub-marine cable of the said Atlantic Telegraph Company, limited, may be extended to this island, and brought into the joint station of the said two companies; and when so extended shall be deemed in law to have been made in compliance with the provisions of the said Act incorporating the New York, Newfoundland and London Telegraph Company, and to be an extension of their telegraph line to Europe, to the same extent, and with the same effect, as if such submarine cable were established, constructed and worked by the said New York, Newfoundland and London Telegraph Company, which said company shall thereupon be deemed to have actually established a connection across the Atlantic ocean, by means of a sub-marine cable, or wire from this island; and all rights, privileges, benefits, and advantages which the said New York, Newfoundland and London Telegraph Company would have had if they had established, constructed and worked a line of telegraph between this island and Ireland, they shall be entitled to have and enjoy upon the laying down of the submarine cable of the said Atlantic Telegraph Company, limited, between this island and Ireland or England.

2. It shall be lawful for the New York, Newfoundland and London Telegraph Company, by resolution of the stockholders, or a majority of them in interest, to effect a consolidation of the said company with the said Atlantic Telegraph Company, limited, upon such terms and conditions, and under such corporate name, as may be agreed upon between the said companies; and upon such consolidation being effected, there shall be thenceforward one consolidated company, into which the said New York, Newfoundland and London Telegraph Company shall be merged; and such consolidated company shall have all the rights, powers and privileges which the said New York, Newfoundland and London Telegraph Company now have, or can have, under its charter or act of incorporation, and the acts amending the same, together with such other powers, rights and privileges as may be given to it by or under any Act of the Imperial Parliament.

3. In case the said Atlantic Telegraph Company, limited, shall procure their incorporation in that or any other name, by an Act of the Imperial Parliament (or in case any other company shall hereafter be formed, with which the said New York, Newfoundland and London Telegraph Company shall enter into an agreement similar in terms to that above mentioned), such other corporation or company shall stand in the place of the said Atlantic Telegraph Company, limited, in respect to every power or authority

hereby given; and this Act shall be deemed to apply thereto in the place and stead of the said Atlantic Telegraph Company, limited.

4. Nothing in this Act contained shall effect any lien, claim, right, title, interest or privilege, secured to the Imperial Government or to the governments of Newfoundland and of the other North American colonies, and of the United States, respectively, under the provisions of the said first recited Act, or of any Act in amendment of the same; and such lien, claim, right, title, interest and privilege shall exist and be in force with respect to any new lines or cables that may be established by the said companies or either of them in this island, and between this island and the continent of America.

5. The shares and estates, stock and interest of the said New York, Newfoundland and London Telegraph Company in the stock and property of any company with which said company shall unite, or into which it shall merge, and the property of the said consolidated company in this colony, and between this colony and the continent of America, shall be in all respects subject and liable to the debts, obligations and liabilities of the said New York, Newfoundland and London Telegraph Company, in like manner as the property of the last mentioned company is now liable to such debts, liabilities and obligations aforesaid.

6. If any person shall wilfully and maliciously throw down, destroy, damage or injure, any post, wire, insulator, cable, line, building, erection, apparatus, machinery, or other works, or obstruct the operation of any line of the said New York, Newfoundland and London Telegraph Company or of the said Atlantic Telegraph Company, limited, after such consolidatio,n and merger as aforesaid, or of any other company with or into which the said New York, Newfoundland and London Telegraph company shall at any time unite or merge, under the provisions of their Act, such person shall be guilty of a misdemeanor, and shall, upon conviction before any Court of Record, be punished with fine or imprisonment, or both, at the discretion of the Court; and upon conviction in a summary manner, before one or more justices of the peace, shall be punished by fine not exceeding twenty dollars, or by imprisonment not exceeding one calendar month, at the discretion of such justice or justices.

7. It shall be lawful for any servant or officer of the New York, Newfoundland and London Telegraph company, or for any other person who may witness the commission of any such offence aforesaid, forthwith to apprehend the offender and take him before a justice of the peace, to be by him held to bail to answer for such offence, either before a Court of Record, or before one or more justices, as the said justice may determine.

8. All such fines as aforesaid shall be paid, one half to the party who shall prosecute for the same, and the other half to the Receiver General for the use of the colony; and no conviction that may be had before one

or more justices shall be quashed for want of form, provided sufficient shall appear in such conviction to warrant the same upon the merits.

9. If any action shall be instituted against any person on account of any such apprehension as aforesaid, the defendant therein may plead the general issue, and give the special matter in evidence.

## 30 VIC., CAP. 17.

**An Act to amend an Act passed in the Seventeenth Year of the Reign of Her present Majesty, entitled "An Act to Incorporate a Company under the style and title of the 'New York, Newfoundland and London Telegraph Company.'"**

[Passed 26th April, 1867.]

Section 1.—Directors may by resolution increase capital stock to six million dollars.

Whereas the directors of the New York, Newfoundland, and London Telegraph Company have applied to the Legislature for sanction to increase the capital stock of the said company to a further sum of three millions of dollars than as provided by the Act hereinbefore in part recited, to enable the said company to construct new land lines of telegraph, and to lay a submarine cable between Placentia, or some portion of this island and the continent of America, in connection with the works of the said company.

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened :—

1. The New York, Newfoundland, and London Telegraph Company may, by resolution of the board of directors, increase the capital stock from time to time to an amount not exceeding three millions of dollars in addition to the present capital stock of the said company as authorized by the said Act; and the said Act shall be construed as if six millions of dollars, instead of three millions of dollars, had been originally inserted therein as the capital stock of the said company.

# 15 VIC., CAP. 2.

## An Act to Incorporate a Company under the style and title of the Harbour Grace Gas Light Company.

[Passed 14th June, 1852.]


Seciton
1.—Company incorporated. Proviso.
2.—Capital Stock to be seven hundred pounds in seven hundred shares of one pound each.
3.—Appointment of directors.
4.—Directors to commence operations and to be elected annually at general meetings.
5.—Boards of directors to consist of seven persons. Quorum. To elect chairman and vice-chairman.
6.—Appointment of clerks and officers of company.
7.—Votes—how regulated among stockholders.
8.—Vote by proxy. Proviso.
9.—Shares to be personal estate. Proviso as to registry of shares.
10.—Shares to be subject to attachment and execution. Proviso.
11.—Liability of stockholders. Provisos.
12.—Proceedings on dissolution. Provisos

Section
13.—General meetings ; how convened.
14.—Powers of corporation to break up roads, lay pipes, &c. Provision for the protection of individuals.
15.—Powers of corporation where buildings owned or occupied by different proprietors.
16.—Gas works to be subject to the inspection of Stipendiary Magistrates. Penalty. Proviso.
17.—Penalties on persons found unlawfully using gas.
18.—Penalties on persons wilfully damaging pipes, apparatus, &c.
19.—Penalties on persons wilfully damaging lamps, &c.
20.—Recovery of penalties not hereinbefore provided for.
21.—Corporation may sue defaulters for shares.
22.—Act to be deemed a public Act.


Whereas the lighting of the houses, public places and streets of Harbour Grace with gas would be of great public utility ; and whereas the several persons hereinafter named are desirous of being united into a company for carrying into effect the purposes aforesaid, but the same cannot be effectually accomplished without the authority of the Legislature :

Be it therefore enacted by the Governor, Council, and Assembly, in Legislative Session convened, that John Munn, William H. Ridley, Daniel Green, John J. Roddick, Patrick Devereux, Hugh W. Trapnell, and Thomas Higgins, and their respective successors, executors, administrators and assigns, and all such other persons as may have associated with them for the purpose aforesaid, and also all such other persons as shall hereafter become stockholders in the company hereby established in manner hereinafter provided, and their respective successors, executors, administrators or assigns, shall be and they are hereby united into a company for the purpose aforesaid, and shall be a body corporate and politic in law, in fact, and in name, by the style and title of the "Harbour Grace Gas Light Company," and by that name shall have perpetual succession and a common seal, with power to alter the same ; and shall and may be capable in law or in equity to sue and be sued, implead and be impleaded, answer and be answered unto, in all courts and places whatsoever ; and shall and may purchase, hold, receive, enjoy, assign and convey any lands, tenements, goods and chattels, and shall and may do and execute all other things in and about the same as may be necessary for the advantage of the said

corporation; and also that they the said company, or the major part present at a general meeting of the said company to be convened as hereinafter provided, shall and may from time to time, and at all times, have full power and authority to ordain, make, and establish, all such rules and bye-laws, and repeal, alter, amend, and add to the same, and to do and perform all such other acts, deeds, matters and things whatsoever as may be necessary for the good government of the said corporation, and as to them as such body corporate and politic shall appertain to do: Provided always, that such rules and bye-laws shall not be in anywise inconsistent with the true meaning of this Act, nor repugnant to the laws of this colony.

**2**. And be it further enacted that the said company may raise and contribute among themselves, as the stock of the said company, a sum not exceeding in the whole seven hundred pounds currency, in seven hundred shares of one pound each; and such sum shall be paid by the stockholders respectively, at such times and in such manner as the directors of the said company may from time to time appoint, and shall be appropriated to the constructing, completing, and maintaining the gas works of the said company, and for carrying into effect the purposes of this Act: Provided always, that whenever the business of the said company shall be found to require a further and additional amount of capital stock, it shall and may be lawful for the said stockholders, at a general meeting to be called for that purpose, and of which due notice of not less than twenty days shall be first given in one or more of the public prints of this colony, to open a list for the purpose, and to increase the said capital stock by a further amount not exceeding the amount of their original stock, in shares of one pound each; and such additional stock may be made and added either in one gross amount and at one time or at two or more distinct and separate times, and in such amounts severally as shall be resolved and agreed upon at the said or any subsequent meeting of the said stockholders to be called as aforesaid.

**3**. And be it further enacted, that the persons aforesaid, whose names are mentioned in the first section, shall be and are hereby declared to be, directors of the said company; and they are hereby empowered to make, ordain, and establish such rules and bye-laws for the good conduct and management of the affairs of the said company and the carrying into effect the purposes of this Act as may be deemed necessary.

**4**. And be it further enacted, that the said directors so appointed as aforesaid shall commence the operations of the said company, and shall continue in office until the first Wednesday in May, one thousand eight hundred and fifty-three; and that on the said first Wednesday in May in each succeeding year a general meeting of the stockholders of the said company shall upon due notice as aforesaid, be holden, at which meeting the directors for the then past year shall exhibit a full and unreserved statement of the affairs of the said company, and such meeting shall thereupon proceed to audit the said accounts so exhibited, to declare a dividend thereon, to elect directors for the then ensuing year who shall be share-

holders in the said company to the amount of twenty shares, to amend, if necessary, or to annul any rule or bye-law of the company, and to transact such other business as may then be brought before them.

**5.** And be it further enacted, that the said board of directors shall consist of seven in number, five of whom shall be a quorum for the transaction of business; and that as soon after their election as may be, such directors shall choose a chairman and vice-chairman, and that in case any vacancy shall arise previously to any such annual meeting as aforesaid, by the death, resignation, or absence from the colony of any member of the said board, the remaining directors shall be, and they are hereby authorized to fill up such vacancy from among the stockholders of the said company, and the person appointed to such vacancy shall continue in office until the time of the holding of the next annual meeting of stockholders.

**6** And be it further enacted, that the directors for the time being shall have power to appoint such officers, clerks and servants as they shall think necessary for executing the business of the said company, and shall allow them such compensation for their respective services as may be reasonable and proper, all which, together with all other contingent expenses, shall be defrayed out of the funds of the corporation; and the said directors shall likewise exercise such other powers and authorities for the well regulating the affairs of the said corporation as shall be prescribed by the bye-laws and regulations of the same.

**7.** And be it further enacted that on every occasion, when in conformity with the provisions of this Act, the votes of the stockholders are to be given, each stockholder shall be entitled to one vote for every share; and that in any case where, upon any question being under the consideration of the board of directors, the number of votes for and against such question shall be equal, the chairman shall have a casting vote.

**8.** And be it further enacted, that all stockholders resident within this colony or elsewhere, may vote by proxy: Provided that such proxy be a shareholder and do produce a sufficient authority in writing from his constituent so to act.

**9.** And be it further enacted, that all and every the shares in the capital stock of the said company, and the profits and advantages thereof, shall be deemed and shall be personal estate, and transferable as such according to the rules and regulations to be established in that behalf: Provided always that no assignment or transfer of any share shall be valid or effectual until such transfer be entered and registered in a book to be kept for that purpose; and provided also, that whenever any stockholder shall transfer in manner aforesaid all his stock or shares in the said company to any other person or persons, such stockholder shall cease to be a member of the said corporation.

**10.** And be it further enacted, that the shares in the capital stock of the said company shall be liable to attachment and execution in like man-

ner as other personal property now is, and that the process or warrant in such cases respectively shall be served on the chairman or vice-chairman of the board of directors, and such service shall bind the shares of such stockholder to the extent of such attachment or execution; and that for the purpose of ascertaining the number of shares held by any stockholder against whom any attachment or execution may have issued, such chairman or vice-chairman, or any director or officer of the said company, may be examined in like manner as a third person having in his or her possession any goods, money, debts, or effects of any defendant, may now be examined; and upon sale by the sheriff of any such shares under any such execution, or under execution issued upon a judgment obtained in the cause wherein the attachment shall have been made on mesne process, the secretary of the said company shall, on production of a bill of sale from the sheriff, transfer the number of shares by him sold under such execution, to the purchaser or purchasers thereof, and such transfer shall be valid and effectual to all intents and purposes: Provided always, that the proceeds of such sale shall be subject and liable in the first instance to any debt that may be due from the said defendant to the said corporation.

**11.** And be it further enacted, that the holders of stock in the said corporation shall be chargeable in their private and individual capacity for the payment of all debts due at any time from the said corporation in proportion to the stock they respectively hold: Provided, however, that in no case shall any one shareholder be liable to pay a sum exceeding the amount of stock actually held by him: Provided nevertheless, that nothing herein contained shall be construed to exempt the joint stock of the said corporation from being also liable for and chargeable with the debts and engagements of the same.

**12.** And be it further enacted, that on a dissolution of the said corporation, immediate and effectual measures shall be taken by the directors then in office for closing all the concerns of the said corporation, and for dividing the capital and profits thereof which may remain after the discharge of all existing debts and liabilities, among the shareholders, in proportion to their respective interests: Provided that such stockholders shall be chargeable in their private and individual capacity for the payment and discharge of all the then existing debts and liabilities of the said corporation in proportion to the stock they shall then respectively hold; subject, however, to the proviso mentioned in the preceding section of this Act: Provided, however, that such liability shall continue for two years only, from and after the time of such dissolution.

**13.** And be it further enacted, that any number of stockholders, not less than ten, who together shall be proprietors of one hundred and fifty shares, shall have power at any time to call a general meeting of stockholders for purposes relating to the business of the said corporation, giving at least ten days' notice in one or more of the public prints in this colony and specifying in such notice the time and place of such meeting and the object thereof; and the board of directors, or any four of them,

shall have the like power at any time, upon observing the like formalities, to call a general meeting as aforesaid.

**14**. And be it further enacted, that it shall be lawful for the said company, and they are hereby empowered, from time to time to break up, dig and trench so much and so many of the streets, squares, and public places of the said town of Harbour Grace, commencing at the works of the said corporation, or such other place as may be expedient, and running throughout the said town, as may be necessary for laying or taking up the main pipes to conduct the gas from the works of the said corporation to the places where the same is to be consumed, or for conveying away the wastings of the said works; and also from time to time to cause such lamps, lamp irons, lamp posts, or other posts, to be placed, fixed, put up, or erected within or upon all or any of the said roads, streets and places as they shall think proper, doing no unnecessary damage in any of the premises, taking care as far as may be to preserve a free and uninterrupted passage through the said streets, squares, and public places while such works are in progress, placing guards or fences, with lamps during the night, and taking such other precautions as may be necessary for the prevention of accidents by any openings, and finishing and replacing the said streets, squares and public places in as good condition as before the commencement of the works without any unnecessary delay; and in case of the neglect of any of the duties herein prescribed, the said corporation shall be subject to pay a fine of five pounds, over and above such damages as may be recovered against the said corporation in any civil action.

**15**. And be it further enacted, that where there are buildings within the said town, different parts whereof shall belong to different proprietors, or shall be in possession of different tenants or lessees, the said corporation shall have power to carry pipes to any part of any buildings so situated, passing over the property of one or more proprietors, or in possession of one or more tenants, to convey the gas to that of another, or in possession of another, and also to break up and uplift all passages which may be a common servitude to neighbouring proprietors, and to dig or cut trenches therein for the purpose of laying down pipes, or taking up or repairing the same, the said corporation doing as little damage as may be in the execution of the powers granted by this Act, and making satisfaction to the owners or proprietors of buildings or other property, or to the public, for all damage to be by them sustained in or by the execution of all or any of the said powers.

**16**. And be it further enacted, that the said corporation shall so construct and locate their gas works and all apparatus and appurtenances thereto appertaining, as in nowise to endanger the public health and safety; and for the purpose of better insuring the due execution of the provisions of this section, all such works, apparatus and appurtenances aforesaid shall be subject to the visits and inspection of the stipendiary magistrates for the said town of Harbour Grace: and the said corporation shall at all times obey all such just and reasonable orders and directions

as they shall receive from the said magistrates for the purpose of ensuring the execution of the provisions of this section, under a penalty not exceeding twenty dollars for every such offence: Provided always, that nothing in this section contained shall extend or be construed to prevent the said corporation, their officers, servants or workmen, from being prosecuted for public or private nuisances arising from the said gas works, or any apparatus or appurtenances thereof, or to prevent the effect of any judgment or sentence lawfully rendered upon any such prosecution.

**17.** And be it further enacted, that if any person or persons shall lay, or cause to be laid, any pipe or main to communicate with any pipe or main belonging to the said corporation, or in anyway obtain or use its gas without the consent of the board of directors or their officers appointed to grant such consent, or shall increase the supply of gas agreed for with the said corporation, by increasing the number or size of the holes in the gas-burners, or using the gas without burners, or otherwise wrongfully or improperly wasting the gas, every such person shall forfeit and pay to the said corporation the sum of ten pounds for every such offence, over and above the value of the gas which may have been so wrongfully used, consumed or wasted; and the same, together with costs of suit in that behalf incurred, may be recovered in any civil action to be brought by the said corporation in any of Her Majesty's Courts of record.

**18.** And be it further enacted, that if any person or persons shall wilfully or maliciously break up, pull down, injure, damage, put out of order, or destroy, any main pipe, lamp, lamp iron or post, or any other apparatus or appurtenance of the said corporation, or any materials used or provided for the same; or shall in anywise wilfully do any other injury or damage, for the purpose of obstructing, hindering, or embarrassing the construction, completion, maintaining or repairing of the said works, or of the apparatus or appurtenances thereof, or shall wilfully extinguish the light of any such lamp as aforesaid, every such person or persons shall, on conviction thereof, to be had in a summary manner before any justice of the peace, forfeit for every such offence a sum not exceeding five pounds, and shall also make full satisfaction for the damage so occasioned; and it shall be lawful for any person or persons who shall see the offence committed, to apprehend without any warrant, and for any other person or persons to assist in apprehending the offender or offenders, and to convey him, her or them to any constable, who is to keep him, her or them in safe custody, and with all reasonable despatch to convey him, her or them before any justice of the peace, in order to his, her or their conviction for such offence; and in case any such offender or offenders shall not on conviction pay the said forfeiture and satisfaction, such justice is hereby required to commit such offender or offenders to the common gaol for any period not exceeding three calendar months, unless such forfeiture and satisfaction shall be sooner paid.

**19.** And be it further enacted, that if any person or persons shall carelessly or accidentally break any of the said lamps, lamp irons, or lamp

posts, or do any other such injury or damage as hereinbefore is mentioned, and shall not upon demand make satisfaction for the injury so done, it shall and may be lawful for any justice of the peace, upon any complaint thereof, to summon the party complained of before him, and upon hearing thereof by the parties on both sides, or on the non-appearance of the party complained of, to examine the matter of complaint, and award such sum of money by way of satisfaction for such damage as such justice shall think reasonable; and in case of neglect or refusal forthwith to pay such money, then the same, and all expenses attending the recovery thereof, may be levied by distress and sale of the defendant's goods and chattels.

**20**. And be it further enacted, that all penalties imposed by this Act, for the recovery of which no method is hereinbefore prescribed, may be sued for and recovered, together with costs of suit, by an action of debt to be brought in any of Her Majesty's Courts of record, or in a summary manner before two or more of Her Majesty's justices of the peace, and by distress and sale of the offender's goods and chattels; and no conviction which may be had under this Act shall be quashed for want of form, provided sufficient appear on the face thereof to warrant such conviction.

**21**. And be it further enacted, that if any person or persons who now are, or hereafter may become, a shareholder or shareholders in the said corporation, shall neglect or refuse to pay the amount of his, her or their respective share or shares to the said corporation, when the same shall be required by the directors thereof for the time being to be paid, it shall and may be lawful for the said directors of the said corporation, in the name thereof, to commence proceedings in law by summons or otherwise, against such person or persons, and proceed to judgment and execution thereon.

**22**. And be it further enacted, that this Act shall be deemed and taken to be a public act, and shall be judicially taken notice of and have the effect of a public act without being specially pleaded.

# 59 VIC., CAP. 39.

## An Act to Incorporate a Company under the style and title of the "St. John's Gas Light Company."

[Passed 4th July, 1895.]


Section
1.—James Baird and others incorporated as the "St. John's Gas Light Company"; Powers of Company.
2.—Capital stock to be $48,000 in 1,200 shares; Increase of stock.
3.—Directors to be seven; Bye-laws.
4.—Election of Directors; Annual meeting.
5.—Quorum; Election of President and filling of vacancies on Board.
6.—Appointment of servants.
7.—Voting.
8.—Vote by proxy.
9.—Shares to be personal estate; Assignments to be registered.
10.—Shares shall be liable to attachment.
11.—Liability of stockholders.
12.—Dissolution of Company.
13.—Special general meetings.
14.—Company may dig up streets, &c.; Penalty.
Section
15.—Company to have power to pass over property of one person to convey gas to another.
16.—Location of gas works; Visitation of Magistrates; Penalty.
17.—Penalty on person fraudulently using gas.
18.—Penalty on person wilfully injuring pipes, &c.
19.—Proceedings in the case of negligent damage to Company's lamps, &c.
20.—Recovery of penalties.
21.—Company may sell gas-meters.
22.—Company may remove meters, &c., from houses of persons discontinuing to use gas.
23.—Company shall, if requested, supply with gas all buildings along the line of the supply pipe.
24.—Security for payment.
25.—Incoming tenant of house not liable for gas supplied to outgoing tenant.
26.—This Act to be public Act.
27.—Duration of Act


Whereas by an Act passed in the seventh year of the reign of Her present Majesty, certain persons therein named, with others who were or would become associated with them as stockholders, their successors, executors, administrators and assigns, were incorporated as a body corporate and politic under the style of the "St. John's Gas Light Company," with such powers and subject to such liabilities as are in the said Act mentioned:

And whereas the term for which the said company was incorporated has expired, and it is expedient the said stockholders should be incorporated for a further term for the purpose of lighting the roads, streets, squares, public buildings and private houses in St. John's, and heating the said buildings or houses with gas, and for other purposes.

Be it therefore enacted by the Governor, Legislative Council and House of Assembly, in Legislative Session convened, as follows:—

1. James Baird, Edgar Bowring, Robert H. Prowse, James Gordon, James B. Sclater, Henry A. Bowring, and William H. Rennie, and their respective successors, executors, administrators and assigns, and all such other persons as are at present associated with them, being stockholders in the St. John's Gas Light Company, and all such other persons as shall hereafter become stockholders in the company hereby established in manner hereinafter provided, and their respective successors, executors, administrtors and assigns, shall be and they are hereby united into a company

for the purposes aforesaid, and shall be a body corporate and politic in law, in fact and in name, by the style and title of the "St. John's Gas Light Company," and by that name shall have perpetual succession and a common seal, with power to alter the same; and shall and may be capable in law to sue and be sued, implead and be impleaded, answer and be answered unto, in all courts and places whatsoever, and shall and may purchase, hold, receive, enjoy, assign and convey any lands and tenements, goods and chattels, and shall and may do and execute all other things, in and about the same, as may be necessary for the advantage of the said corporation; and also they, the said company, or the major part of them, shall and may, from time to time, and at all times, have full power and authority to ordain, make and establish all such rules and bye-laws, and do and perform all such other acts, deeds, matters and things whatsoever as may be necessary for the good government of the said corporation, and as to them as such body politic and corporate shall appertain to do: Provided always, that the said lands, tenements and hereditaments to be holden by the said corporation shall not exceed in yearly value the sum of four thousand dollars; and provided also, that such rules and bye-laws shall not be in any wise inconsistent with the true intent and meaning of this Act, nor repugnant to the laws of this colony.

**2**. The capital stock of the said company shall be forty-eight thousand dollars, in twelve hundred shares of forty dollars each, and shall be appropriated to the purpose of constructing, completing and maintaining the gas-works of the said company, and for carrying into effect the purposes of this Act, or other works for illuminating, heating or other purposes: Provided always, that whenever the business of the said company shall be thought to require a further and additional amount of capital stock it shall and may be lawful for the said stockholders, at any general or special meeting to be called for that purpose, and of which due notice of not less than twenty days shall be first given in two of the newspapers published in this colony, of which the *Royal Gazette* shall be one, to increase the said capital stock by the further sum of forty-eight thousand dollars, in shares of forty dollars each, and such additional stock may be made and added either in one gross amount and at one time or at two or more distinct and separate times, and in such amounts severally as shall be resolved and agreed upon at the said or at any subsequent meeting of such stockholders to be called as aforesaid: Provided further, that the stock of the Saint John's Gas Light Company, the term of whose incorporation expired on the twenty-ninth day of April, A. D. 1894, shall be stock of the company now incorporated, and all liens thereon or interests created therein shall exist and continue to exist as fully and completely and to all intents and purposes as if such expiry had not taken place.

**3**. The directors shall be seven in number, being each a proprietor of ten or more shares in the said company, and the said directors shall make, ordain and establish such rules and bye-laws for the good conduct and management of the affairs of the said company, and the carrying into effect the purposes of this Act, as may be deemed necessary.

4. The directors of the said company elected at the last meeting of stockholders shall continue in office until the first Monday in May of the year A. D. 1896, upon which date, and on the similar date in each succeeding year, a general meeting of the stockholders of the said company shall be holden at such time and place as shall be stated in a fourteen days' notice thereof, to be published in the *Royal Gazette* and one other newspaper, at which meeting the directors for the then past year shall exhibit a full and unreserved statement of the affairs of the said corporation, and such meeting shall thereupon proceed to audit the said accounts so exhibited, to declare a dividend thereon, to elect directors for the then ensuing year, to amend, if necessary, or to annul any rule or bye-law of the said company, and to transact such other bnsiness as may then be brought before them.

5. Four of the board of directors, of whom the president or vice president, to be appointed as hereinafter described, shall be one, shall be a quorum for the transaction of business; and, as soon after their election as may be, such directors shall choose a president and vice president, and in case any vacancy shall, previously to any such annual meeting as aforesaid, arise by the death, resignation, or absence from the colony of any member of the said board, the remaining directors shall be, and they are, hereby authorized to fill up such vacancy from among the stockholders of the said company, and the person appointed to such vacancy shall continue in office until the time of the holding of the next annual meeting of stockholders.

6. The directors shall have power to appoint such officers, clerks and servants as they shall think necessary for executing the business of the said corporation, and shall allow them such compensation for their respective services as may be reasonable and proper; all which, together with the expenses of all other contingencies, shall be defrayed out of the funds of the corporation; and the said directors shall likewise exercise such other powers and authorities for the well regulating the affairs of the said corporation as shall be prescribed by the bye-laws and regulations of the same.

7. On every occasion, when in conformity with the provisions of this Act, the votes of the stockholders are to be given, each stockholder shall be entitled to one vote for every share; and in any case where, upon any question being under the consideration of the board of directors, the number of votes for and against such question shall be equal, the president shall have a casting vote: Provided always, that no stockholder of the said corporation shall in any case be entitled to more than fifty votes.

8. All stockholders resident within this colony or elsewhere may vote by proxy: Provided that such proxy be a stockholder, and do produce a sufficient authority in writing from his constituent so to act

9. All and every the shares in the capital stock of the said company and all profits and advantages thereof, shall be deemed and shall be per-

sonal estate, and transmissible as such according to the rules and regulalations of the said company in that behalf: Provided always that no assignment or transfer of any share shall be valid or effectual until such transfer be entered and registered in a book to be kept for that purpose; and provided also that whenever any stockholder shall transfer in manner aforesaid all his stock or shares in the said company to any other person or persons such stockholder shall cease to be a member of the said corporation.

**10.** The shares in the capital stock of the said company shall be liable to attachment and execution in like manner as other personal property now is, and the process or warrant in such cases respectively shall be served on the president or vice president of the board of directors, and such service shall bind the shares of such stockholders to the extent of such attachment or execution; and for the purpose of ascertaining the number of shares held by any stockholder against whom any attachment or execution may have issued such president or vice president or any director or officer of the said company, may be examined in like manner as any third person having in his or her possession any moneys, goods, debts or effects of any defendant, may now be examined; and upon sale by the sheriff of any such shares under any such execution or under execution issued upon a judgment obtained in the cause wherein the attachment shall have been made on mesne process, the clerk of the said company shall, on production of a bill of sale from the sheriff, transfer the number of shares by him sold under such execution to the purchaser or purchasers thereof, and such transfer shall be valid and effectual to all intents and purposes: Provided that when the attachment shall have been made under a writ of execution, the sale by the sheriff shall be made within thirty days after the warrant shall have been left with the president or vice-president; and when the attachment shall have been made under mesne process, the sale shall be made within thirty days after such time as the plaintiff could have signed judgment in the cause in which such attachment on mesne process shall have issued; and provided also that the proceeds of such sale shall be subject and liable in the first instance to any debt that may be due from the said defendant to the said corporation.

**11.** The holders of stock in the said corporation shall be chargeable in their private and individual capacity for the payments of all debts due at any time from the said corporation in proportion to the stock they respectively hold: Provided however, that in no case shall any one stockholder be liable to pay a sum exceeding the amount of stock then actually held by him: Provided nevertheless, that nothing previously herein contained shall be construed to exempt the joint stock of the said corporation from being also liable for and chargeable with the debts and engagements of the same.

**12.** On any dissolution of the said corporation, immediate and effectual measures shall be taken by the directors then in office for closing all the concerns of the said corporation, and for dividing the capital and profits

thereof, which may remain after the discharge of all existing debts and liabilities, among the stockholders, in proportion to their respective interests: Provided, that such stockholders shall be chargeable in their private and individual capacities for the payment and discharge of all then existing debts and liabilities of the said corporation, in proportion to the stock they shall then respectively hold, subject, however, to the proviso mentioned in the preceding section of this Act: Provided, however, that such liability shall continue for two years only from and after the time of such dissolution.

**13**. Any number of stockholders not less than ten, who together shall be proprietors of one hundred shares, shall have power at any time to call a general meeting of stockholders for purposes relating to the business of the said corporation, giving at least ten days' previous notice in two of the newspapers published in the colony (of which the *Royal Gazette* shall be one), and specifying in such notice the time and place of such meeting and the objects thereof; and the board of directors, or any four of them, shall have the like power at any time, upon observing the like formalities, to call a general meeting as aforesaid.

**14**. It shall be lawful for the said company, and they are hereby empowered, from time to time to break up, dig and trench so much and so many of the roads, streets, lanes, squares and public places of the said town of Saint John's, commencing at the works of the said corporation or such other place as may be expedient, and running throughout the said town as may be necessary for laying or taking up the mains and pipes to conduct the gas from the works of the said corporation to the places where the same is to be consumed, or for conveying away the wastings of the said works; and also from time to time to cause such lamps, lamp-irons or lamp-posts, or other posts, to be placed, fixed, put up or erected within or upon all or any of the said roads, streets and places as they shall think proper, doing no unnecessary damage in any of the premises and taking care, as far as may be, to preserve a free and uninterrupted passage through the said roads, streets, lanes, squares and public places while such works are in progress; placing guards or fences with lamps during the night, and taking such other precautions as may be necessary for the prevention of accidents by any openings; and finishing and replacing the said roads, streets, lanes, squares and public places in as good a condition as before the commencement of the works, without any unnecessary delay; and that in case of the neglect of any of the duties herein prescribed, the said corporation shall be subject to pay a fine of twenty dollars over and above such damages as may be recovered against the said corporation in any civil action.

**15**. Where there are buildings within the said town, different parts whereof shall belong to different proprietors, or shall be in possession of different tenants or lessees, the said corporation shall have power to carry pipes to any part of any building so situated, passing over the property of one or more proprietors, or in possession of one or more tenants, to convey

the gas to that of another, or in possession of another, and also to break up and uplift all passages which may be a common servitude to neighbouring proprietors, and to dig or cut trenches therein for the purpose of laying down pipes, or taking up and repairing the same; the said corporation doing as little damage as may be in the execution of the powers granted by this Act, and making satisfaction to the owners or proprietors of buildings or other property, or to the public, for all the damage to be by them sustained in or by the execution of all or any of the said powers.

**16.** The said corporation shall so construct and locate their gas works, and all apparatus and appurtenances thereunto appertaining, as in no wise to endanger the public health or safety; and, for the purpose of better ensuring the due execution of the provisions of this section, all such works, apparatus and appurtenances aforesaid, shall be subject to the visits and inspection of the stipendiary magistrates of the said town of St. John's; and the said corporation shall at all times obey all just and reasonable orders and directions as they shall receive from the said magistrates for the purpose of ensuring the execution of the provisions of this section, under a penalty not exceeding twenty dollars for every such offence: Provided always, that nothing herein contained shall extend or be construed to prevent the said corporation, their officers, servants or workmen, from being prosecuted for public or private nuisance arising from the said gas works, or any apparatus or appurtenances thereof, or to prevent the effect of any judgment or sentence lawfully rendered upon any such prosecution.

**17.** If any person or persons shall lay, or cause to be laid, any pipe or main to communicate with any pipe or main belonging to the said corporation, or in any way obtain or use its gas without the consent of the board of directors or their officer appointed to grant such consent, or shall increase the supply of gas agreed for with the said corporation by increasing the number or size of the holes in the gas burners, or using the gas without burners, or otherwise wrongfully, negligently or wastefully burning the same, or by wrongfully or improperly wasting the gas, every such person shall forfeit and pay to the said corporation the sum of forty dollars for every such offence, over and above the value of the gas which may have been so wrongfully used, consumed or wasted, and the same, together with costs of suit in that behalf incurred, may be recovered in any civil action to be brought by the said corporation in any of Her Majesty's Courts of record.

**18.** If any person or persons shall wilfully or maliciously break up, pull down, injure, damage, put out of order, or destroy any main, pipe, lamp iron, lamp post, or any other apparatus or appurtenance of the said corporation, or any materials used and provided for the same, or shall in any wise wilfully do any other injury or damage, for the purpose of obstructing, hindering or embarrassing the construction, completion, maintaining or repairing of the said works, or of the apparatus or appurtenances thereof, or shall wilfully extinguish the light of any such lamp as aforesaid, every such person or persons shall, on conviction therefor to be had in a

summary manner before any justice of the peace, forfeit for every such offence any sum not exceeding twenty dollars, and shall also make full satisfaction for the damage so by them occasioned; and it shall be lawful for any person or persons who shall see the offence committed to apprehend without any warrant, and for any other persons to assist in apprehending the offender or offenders, and to convey him or them to any constable, who is to keep him, her or them in safe custody, and with all reasonable despatch to convey him, her or them before any justice of the peace, in order to his, her or their conviction for such offence; and in case any such offender or offenders shall not, on conviction, pay the said forfeiture and satisfaction, such justice is hereby required to commit such offender or offenders to the common gaol for any period not exceeding three calendar months, unless such forfeiture and satisfaction shall be sooner paid.

**19.** If any person or persons shall carelessly or accidentally break any of the said lamps, lamp irons or lamp posts, or do any other such injury or damage as hereinbefore is mentioned, and shall not upon demand make satisfaction for the injury so done, it shall and may be lawful for any justice of the peace upon any complaint thereof, to summon the party complained of before him, and upon hearing thereof by the parties on both sides, or on the non-appearance of the party complained of, to examine the matter of complaint and award such sum of money by way of satisfaction for such damage as such justice shall think reasonable; and in case of neglect or refusal forthwith to pay such money, then the same and all the expenses attending the recovery thereof, may be levied by distress and sale of the defendant's goods and chattels.

**20.** All penalties imposed by this Act, for recovery of which no method is hereinbefore prescribed, may be sued for and recovered, together with costs of suit, by any action of debt to be brought in any of her Majesty's courts of record, or in a summary manner before any two or more of her Majesty's Justices of the Peace, and by distress and sale of the offender's goods and chattels; and no conviction which may be had under this Act shall be quashed for want of form, provided sufficient appear on the face thereof to warrant such conviction.

**21.** The company may sell and dispose of gas meters and gas fittings of every description for the use of private and public buildings, or for any establishment, company or corporation whatsoever, as well as coke, coal tar and all and every the products of the works, refuse or residuum, arising or to be obtained from the materials used in or necessary for the manufacture of gas; and the company may let out for hire gas meters and gas fittings of every kind and description at such rate and rents as may be agreed upon between the consumers or tenants and the company.

**22.** Where a consumer discontinues the use of the gas or the company lawfully refuses to continue any longer to supply the same, the officers and servants of the company may at all reasonable times enter the premises in or upon which such consumer was supplied with gas, or

other means of lighting or heating, for the purpose of removing them from any fittings, machines, apparatus, meters, pipes or other things, being the property of the company in or upon such premises, and may remove the same therefrom doing no unnecessary damage.

**23**. It shall be the duty of the company to supply with gas all buildings within the municipality situate upon land lying along the line of any supply pipe of the company upon the same being requested by the owner, occupant or other person in charge of any such building.

**24**. The company, before supplying gas to any building, or as a condition to its continuing to supply the same, may require any consumer to give reasonable security for the payment of the proper charges of the company therefor or for carrying the gas into such building.

**25**. In case any consumer leave the premises where gas was supplied to him without paying to the Gas Company the rate or meter rent due from him, the Gas Company shall not require from the next tenant of the premises payment of the arrears so left unpaid unless the incoming tenant agreed with the defaulting consumer to pay the arrears; but the Gas Company shall, notwithstanding any such arrears in the absence of collusion between the outgoing and incoming tenant, supply gas to the incoming tenant as required by this Act on being required by him so to do.

**26**. This Act shall be deemed and taken to be a public Act and shall be judicially taken notice of, and have the effect of a public Act without being specially pleaded.

**27**. This Act shall be deemed to have come into force on the 29th day of April, A. D. 1894, upon the expiration of the Act 7 Vic, Cap. 12, and shall continue and be in force for the period of fifty years from such date and no longer. All actions, deeds, matters and things performed by the said company or its directors, from the expiration of the said Act to the date of the coming into force of the present Act, are hereby declared to be legal and valid, and the said company and the directors thereof are hereby indemnified therefor: Provided that such actions, deeds, matters and things would have been legal and valid if such expiry had not taken place.

# 36 VIC., CAP. 5.

## An Act to Incorporate the Harbor Grace Water Company.

[Passed 25th March, 1863.]


Section
1.—John Munn and others united into a company for the purposes of this Act.
2.—Capital stock ten thousand pounds currency in two thousand shares at five pounds each, payable at such times as directors may appoint, &c.
3.—Capital stock may be extended to twelve thousand pounds currency.
4.—By whom certificates of stock shall be signed. Interest at the rate of five per cent., payable by the company; and in default thereof, payable by the Receiver General.
5.—Time at which first general meeting shall be held. How summoned. Six directors to be elected.
6.—When meetings may be called for special purposes.
7.—Mode of voting at meeting of stockholders.
8.—Four directors form quorum. Election of president. Provision as to vacancies. Statement of affairs to be submitted. Appointment of officers. Salaries to be subject to approval of the Governor.
9.—Shares in the stock assignable, subject to rules.
10.—Shares liable to attachment, &c.
11.—Company may dig trenches in streets, &c.
12.—Repairs of service pipes. Cost to be borne by consumers.
13.—Mode of compensating parties for lands taken or damaged.
14.—Penalty for using water without consent of company.

Section
15.—Penalty for interrupting company in the exercise of the powers vested by this Act.
16.—Annual statement to be transmitted to Colonial Secretary. Power of Government to inspect books of company.
17.—After twenty years Government may purchase works of company on certain conditions.
18.—Streets through which pipes and mains must be conveyed. Provision for supply of water to the poor.
19.—Directors may establish water rates subject to the control of the Governor. Notice of change of rate.
20.—Owners and occupiers to pay rates, &c. Proviso as to supply for manufacturing.
21.—Meaning of term "owners."
22.—Appraisers to be appointed by the Governor. Their duties.
23.—Return of appraisers open to examination. Court of revision.
24.—Secretary to act as collector, and give bonds, &c. Duties of collector.
25.—Officers to be paid from company's funds such sums as the Governor shall determine.
26.—Occupiers at a less rent than seven pounds currency to be exempt.
27.—Governor may appoint one director. No proceeding of the board valid against the recorded vote of such Government director, until approved of by the Governor.


Whereas it is expedient to provide for a sufficient supply of water to the town of Harbor Grace, by the incorporation of a company formed for that purpose upon the conditions hereinafter mentioned:

Be it therefore enacted, by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

1. John Munn, William Donnelly, William Henry Ridley, Arthur Thomey, John Hayward, Henry Tyte Moore, Robert Walsh, John J. Roddick, Nathaniel Davis, Daniel Green, Patrick Strapp, James Crane, George Brown, Captain John Munn, George Mackinson, and George Rutherford, and all such other persons as may have associated with them for the purposes aforesaid, or may hereafter become stockholders in the said company, and their respective successors, executors, administrators and assigns shall be and they are hereby united into a company

for the purposes aforesaid, and shall be a body corporate and politic, in law, in fact and in name, by the style of "The Harbor Grace Water Company," and by that name shall have perpetual succession and a common seal, with power to alter the same, and shall be capable in law of sueing and being sued, impleading and being impleaded, in all courts and places whatsoever, and shall and may purchase, hold, receive, and assign lands and chattels, and all such matters and things as may be necessary for the business of the said corporation, and as to them as such body politic and corporate shall pertain to do.

**2.** The capital stock of the said company shall consist of ten thousand pounds currency, being in two thousand shares of five pounds currency each, payable at such times as the directors of said company for the time being may appoint; and such sum, or so much thereof as may be necessary, shall be applied to the purposes of constructing, completing and maintaining the water works of the said company, and for carrying into effect the purposes of this Act: Provided, that if the instalments payable by any stockholder shall not be paid at the time appointed by the directors, or within ten days thereafter, the amount paid up by such defaulter shall be forfeited, and his share in the said company sold on his account for the highest price that can be had for the same.

**3.** If found necessary for the purposes of this Act, it shall be competent for the company, at a general meeting of the stockholders, to be called in manner hereinafter directed, to extend their capital stock to the amount of [twelve thousand pounds currency in the whole, or of such proportion thereof as may be requisite]*(a)*; and such further stock shall be distributed in shares of the like amount, and be payable as before directed, and shall have the like advantages in all respects as are hereinbefore provided with respect to the stock first subscribed; but such extension shall not take place without the assent of the Governor in Council of the colony.

**4.** All certificates of stocks issued by the said company shall be signed by the president and countersigned by the secretary of the said company, and certified by the colonial secretary; and the holders thereof shall, on the production thereof to the president of the said company, be entitled to receive out of the funds at the disposal of the said company, interest upon the amount of such stock, at the rate of five per cent. per annum; and in default of payment by the said company, the said holders upon production thereof at the office of the receiver general, shall be entitled to receive from the funds of the colony the said interest, which interest, whether paid by the company or colony as aforesaid, shall be paid on the first days of July and January in each year.

**5.** As soon as the necessary amount of capital shall be subscribed, the first general meeting of stockholders shall be held at Harbor Grace, at a

*(a)* Further increase of $8,000, authorized by 44 Vic., c. 10. Further increase of $12,000, authorized by 44 Vic., c. 17.

time and place to be appointed by the provisional committee, upon fourteen days' notice in at least two newspapers, of which the *Royal Gazette* shall be one; and such meeting shall appoint six persons, being each a proprietor of at least thirty shares, to be directors of the company for the then ensuing year; and upon the first Monday of July, in each succeeding year, during the existence of the company a like general meeting for the like purposes, and upon the like notice, shall be held at the place aforesaid.

**6.** The directors may at any time of their own accord, or upon the requisition of the holders of five hundred shares, call a general meeting of the stockholders for any special purpose, notice being given in manner aforesaid.

**7.** At all general and annual meetings the stockholders shall vote by ballot, the holders of five shares shall be entitled to one vote, and so on for every five shares; holders of less than five shares shall not be entitled to vote at such annual and general meetings. Rules and bye-laws may be passed for the government of the company and the management of its business, and absent shareholders may vote by agent duly constituted for such purpose by written authority: Provided that such agent shall be a shareholder in the said company.

**8.** Of the directors to be elected as aforesaid four shall form a quorum; they shall elect a president from amongst their number, and in case a vacancy shall arise on the board by the death, resignation, or absence from the colony of any member, the remaining directors shall fill up the vacancy from amongst the stockholders, the person so appointed holding office until the next annual meeting. At every annual meeting the directors shall lay before the meeting a full and unreserved statement of the affairs of the company; they shall have power to appoint such officers and at such salaries as they may consider necessary for the general management of the company's affairs and business, but such salaries shall, before being finally adopted by the company, receive the approval of the Governor in Council.

**9.** The shares in the stock of the said company shall be assignable by endorsement, but under and subject to such rules as may be provided in that behalf; and no assignment of any share shall be valid unless the assignor shall have paid off all his liabilities actually due to the company, and until such assignment shall be entered in a book to be kept for that purpose.

**10.** The shares of any stockholders in the said company shall be liable to attachment and execution by service of a warrant of attachment on the president or secretary of the company, and such service shall bind the shares of such stockholder for all beyond the amount of his liabilities actually due to the company; and upon the production of a bill of sale from the sheriff of such shares, or upon an order of court to such effect, the directors shall register a transfer of such shares to the purchasers thereof, by virtue of the provisions of this Act.

**11.** It shall be lawful for the company to break, dig, and trench the streets, squares, public places and lands in and near the town of Harbour Grace, as may be necessary,*(b)* observing all proper precautions for the safety and convenience of the public; and for the purposes of this Act, from time to time, after compensation made or tendered to the owner in that behalf, to enter upon, excavate, trench, possess and hold, as the property of the company, the lands of private parties in or near the said town.

**12.** [The costs of repairs of service pipes shall be borne by the consumers, by whom such pipes shall be used. And it shall be lawful for the said company, with or without the consent of the occupier or proprietor, to introduce branch or service pipes into any building subject to the rate or assessment.]*(c)*

**13.** Should any person whose land shall have been so entered upon, excavated or taken as aforesaid, deem the amount tendered to him by the company insufficient compensation for any injury sustained by him by any act of the company, their agents or servants, or for any portion of his land, tenements or premises, appropriated or used by the company, it shall be competent for such person to appoint one arbitrator, and the said company another, and such two arbitrators shall appoint a third, and the award of any two of them, signed by them after hearing both parties and their witnesses, as to such compensation, shall be final and binding. Should either party neglect or refuse, upon being required by the other to appoint an arbitrator within ten days after being so required, or should the two arbitrators, when so appointed, not agree to the appointment of a third within ten days after their appointment, it shall be lawful for the Supreme Court of this island, or any judge thereof, upon the application of either party, to appoint an arbitrator for the party refusing, omitting, or neglecting to make such appointment, and the arbitrator, when so appointed, shall have the same power in all respects as if appointed by either party, or the said two arbitrators.

**14.** If any person shall in any way obtain or use the water of the said company, without the consent of its proper officers, or shall wrongfully waste the same, such offender shall forfeit a sum not exceeding forty dollars, to be recovered with costs in an action at the suit of the company in any Court of record: Provided that this section shall not extend to parties taking water from the public pumps, hereinafter mentioned, nor to any use of the said water in case of a fire occurring in the said town.

**15.** If any person shall wilfully or maliciously hinder or interrupt, or cause or procure to be hindered or interrupted, the contractors, servants, agents, or workmen of the company, in the exercise of any of the powers and authorities in this Act contained; or if any person shall wilfully and

*(b)* Extended to Harvey street and other streets by 50 Vic., cap. 17, sec. 3.
*(c)* Repealed by 27 Vic., cap. 4, sec. 19.

maliciously put out of order, injure or destroy any pipe, hydrant, or any other work or material of the company, such offender, on conviction in a summary manner before a justice of the peace, shall forfeit a sum not exceeding five pounds with costs of suit, and shall pay, upon the order of such justice, a sum equal to the amount of damage so occasioned by him, and in default of such payment shall be imprisoned for a period not exceeding three calendar months; and it shall be lawful for any person who may witness the commission of such offence to apprehend without warrant and for any other person to assist in apprehending such offender, and to convey him before a justice to be dealt with in manner aforesaid.

**16**. Copies of the annual statement of the company's affairs shall be transmitted to the Colonial Secretary within twenty days after the annual meeting. The Government shall have power at all times to inspect the books of the said company, and all the net profits of the company, after payment of interest upon the stock and all incidental expenses shall, within thirty days after each annual meeting, be paid to the Receiver General to be applied in repairs of the said water works and the formation of a sinking fund for the purchase of the capital stock hereinafter provided.

**17**. If at any time after twenty years from the passing of this Act it shall be deemed advisable by the Governor in Council, with the assent of the Legislature, that the water works and other property of the said company shall be transferred to and vested in the Government of this colony, it shall be lawful for the Governor to cause a written notice to be given to the said company, which shall be served upon the president, secretary, director or manager of the said company in this colony, which notice shall state that the Government has decided upon becoming the holder of the said water works and other property and is prepared to pay the shareholders in the said company, upon production of their certificates as aforesaid, the amount of stock they may hold in the said company as shewn by the said certificates, together with six per cent. interest from the time of the last payment of interest upon the amount of such stock; and after the expiration of one year from the time of the service of such notice and the payment or tender of payment of principal and interest to the stockholders as aforesaid, all and singular the said water works and other property of the said company shall become the property of Her Majesty for the benefit and public use of the colony, and shall be thenceforth held free and discharged from all claims of the said company or stockholders thereof, or any person whomsoever; and the Governor shall draw warrants on the Receiver General of this colony for the payment of the several stockholders in the said company of the principal and interest aforesaid.

**18**. It shall be obligatory upon the company to cause a sufficient supply of pure and wholesome water to be conveyed in pipes and mains through the several streets in the said town, as follows, namely: from the point where the pipes from Bannerman Lake meet the main road near

Ship Head to the foot of Carbonear road, through Water street, Noad street, Victoria street, Bannerman street, LeMarchant street and Cochrane street, and to erect in such places within the said limits, as the Governor in Council may direct, fountains for the supply of water to the poor, and to establish hydrants throughout the said town, as the Governor in Council may think necessary; and to extend the said supply of water in pipes or mains throughout such other streets and within such other limits as the Governor in Council shall at any time direct.

**19.** It shall be lawful for the directors of the said company, subject in all cases to the approval and control of the Governor in Council, from time to time to fix and establish water rates and assessments under this Act at such amounts as may be necessary for the purposes of this Act, all which rates and assessments shall be levied, collected and paid in advance, half-yearly: Provided always that notice of any change in the rate or assessments aforesaid shall be given by publication in the *Royal Gazette*, and that the minute of Council confirming the same shall be laid before both branches of the Legislature at the next ensuing session.

**20.** As soon as the water works shall be in operation the owners and occupiers of all houses and other buildings along which pipes shall have been laid and within two hundred yards of any such pipes, shall pay semi-annually, in advance, in manner herein provided the rates and assessments imposed by the nineteenth section of this Act: Provided that Government buildings, churches, public school-houses, and buildings belonging to charitable bodies shall be exempt from this assessment: Provided also, that in establishing any water rate regard shall be had not only to the rent value of the premises supplied with water, but also to the quantity of water which may be supplied, whether for trading, manufacturing, shipping or other purposes.

**21.** [The term "owners" shall, for the purposes of this Act, mean all persons who, at the time of such assessment, have any insurable interest, either present or in reversion, in the houses and other buildings aforesaid; the assessment upon such present interest shall be estimated by the yearly rent value of such houses and other buildings, or the profit rent thereof, as the case may be; and the assessment upon reversionary interests shall be estimated on the appraised annual interest of the lessor in the buildings for the unexpired term: Provided that nothing in this Act contained shall affect mortgages; but in case of mortgaged property coming within the operation of this Act, the assessment chargeable thereon shall be paid by the mortgagor.]*(d)*

**22.** [For the purpose of ascertaining the amount of such assessment, and of collecting and recovering the same, it shall be lawful for the Governor in Council to appoint one or more appraisers, who shall be sworn before a Justice of the Peace faithfully to discharge the duties of

*(d)* Repealed by 27 Vic., cap. 4, sec. 19.

their office; such appraisers shall annually appraise all such houses and other buildings as aforesaid, and shall deposit the books of such appraisement, when completed, with the Clerk of the Peace for Harbour Grace.] *(e)*

**23.** [Such return shall be open to the examination of all parties interested therein; and after the expiration of one calendar month after it shall have been so deposited, the Court of Sessions for the district of Harbour Grace shall at certain times, within one month thence following, to be notified by advertisements published in a public newspaper in Saint John's and Harbour Grace, hold a Court for the revision of such return. It shall be competent for any person named in such return, by a notice in writing to be filed in the office of the said Court and served on the said appraiser within the month first mentioned, to object to the amount for which his or her property or interest therein may have been appraised, which objection the said Court shall hear and determine, and amend or confirm the return accordingly; and after the expiration of the times fixed for the holding such Court the said return shall be final and binding on all parties for the then ensuing year.] *(f)*

**24.** [The secretary to be appointed to the company shall act as collector, and shall give sufficient security faithfully to discharge the duties of his office as such collector. The collector to be appointed as aforesaid shall, as soon as possible after such appraisement shall have been completed, collect from the parties respectively liable in that behalf their contributions towards such assessment; and in case any person so liable shall neglect or refuse to pay such contribution, the same may be recovered with costs in a summary manner by a suit in the Court of Sessions for the district of Harbour Grace, to be brought in the name of the said secretary: Provided that service of process upon the agent of any absent or non-resident defendant shall be service upon the principal: Provided also, that in any such action it shall be deemed good service of process upon the defendant if the same be left at the residence of such defendant.] *(g)*

**25.** The president, appraisers, secretary and other officers to be appointed under the provisions of this Act, shall be paid out of the funds of the said company such sums as the Governor in Council shall determine.

**26.** Occupiers of houses or tenements of a less annual value than seven pounds currency shall be exempt from the payment of the water rates.

**27.** It shall be lawful for the Governor in Council to appoint a director of the said company to hold office during pleasure of the Government, in addition to the directors chosen by the shareholders thereof, and no proceeding of the board of directors shall be of any effect or validity against which such Government director, in his place at the board of directors, shall record his vote until such proceeding shall be submitted to and approved of by the Governor in Council.

*(e)* Repealed by 27 Vic., cap. 4, sec. 19. *(f)* Ibid. *(g)* Ibid.

# 27 VIC., CAP. 4.

## An Act for the amendment of the General Water Company Acts, and also of the Act for the Incorporation of the Harbour Grace Water Company.

[Passed 13th April, 1864.]


Section
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19.—Sections repealed without affecting former proceedings.
20.—Appraisers to be appointed; their duties; appointment, &c.
21.—Books open to examination; Court of Revision.
Section
22.—Duties of secretary and collector; Collection of rates; Proceedings for collection of rates; Proviso; Service of process.
23.—Appraisements made and other proceedings confirmed.
24.—Judgments for and collection of rates confirmed; Not removable by certiorari; Proviso in certain cases.


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And whereas it is also necessary to alter and amend certain portions of the Act twenty-six Victoria, chapter five, entitled "An Act to Incorporate the Harbour Grace Water Company."

**19.** Be it therefore further enacted that the twelfth, twenty-first, twenty-second, twenty-third and twenty-fourth sections of the said Act are hereby repealed, without, however, in anywise affecting the validity of any matters done or proceedings had thereunder, and except so far as the same may be necessary to sustain the imposition, collection and recovery of water rates and assessments under this and the same Act or either of them.

**20.** For the purpose of ascertaining the amount of water rates and assessments under the said last mentioned Act, it shall be lawful for the Governor in Council, from time to time as may be necessary, to appoint one or more appraisers, who shall be sworn before a Justice of the Peace faithfully to discharge the duties of their office; and it shall be the duty of such appraisers to appraise the ground rents of all houses and other buildings along which the pipes of the said company shall have been laid, and within two hundred yards of such pipes; also the profit rent of such houses and buildings, and also the rent value of the same at such time and times as may be deemed necessary by the Governor in Council during the continuance of the said Act; and when such appraisement shall be completed they shall deposit the book or books of such appraisement with the Clerk of the Peace for Harbour Grace.

**21.** Such book or books of appraisement shall be open to the examination of all parties interested therein; and, after the expiration of fourteen days after it or they shall have been so deposited, the Court of

Sessions at Harbour Grace shall, at certain times within fourteen days thence following, to be notified in a public newspaper in St. John's or Harbour Grace, hold a Court for the revision of such appraisement; and it shall be competent for any person therein interested, by a notice in writing to be filed in the office of the said Court and served on the said appraisers or two of them, within the fourteen days first mentioned, to object to the amount for which his or her property or interest therein may have been appraised, which objection the said Court shall hear and determine and amend or confirm the appraisement accordingly; and after the expiration of the times fixed for holding such Court the said appraisement shall be final and binding on all parties until a new appraisement and revision shall have been made.

**22**. The secretary of the said company shall be collector, and shall give sufficient security faithfully to discharge the duties of his office as such collector, and shall, after the completion of such appraisement, and as soon as the directors of the said company shall have ascertained the amounts to which the several parties mentioned or interested therein shall be liable towards the said water rates and assessments, which they are hereby authorized to do, collect from the parties respectively liable in that behalf their contributions towards such water rates and assessments; and in case any person so liable shall neglect or refuse to pay such contribution, the same may be recovered with costs in a summary manner by a suit in the Court of Sessions at Harbour Grace, to be brought in the name of the said collector: Provided that service of process upon the agent of any absent or non-resident defendant shall be service upon the principal, and also that in any action it shall be deemed good service of process upon the defendant if the same be left at the residence of the defendant.

**23** The appraisement already made for the said Harbour Grace Water Company, and the revision thereof, are hereby confirmed and shall be held and determined and are hereby declared to be legal, valid and obligatory as well for the ascertaining, fixing, establishing and recovering of water rates of occupiers of such houses and buildings, as of owners' assessments; and the said rates and assessments shall be payable by all owners and occupiers referred to in the said appraisement; and the provisions of this and the said Act, twenty-six Victoria, chapter five, shall be available and operative for the collection and recovery of the said water rates and assessments from the persons named or interested in the said appraisement; and the collector of the said company may take the like proceedings for the recovery of all water rates and assessments due by any person named or interested in the said first appraisement, and shall recover the same in like manner as is prescribed by the twenty-second section of this Act.

**24**. All judgments, orders or proceedings in the said Court of Sessions hereafter to be made or had in any suit or action for the recovery of such water rates or assessments, or either of them, and whether imposed by

this or the said last mentioned Act, shall be final and binding upon the parties thereto; and no such suit, action, judgment, order, or proceeding, shall be removable from such Court by certiorari or otherwise: Provided that in any action for a rate or assessment above forty dollars it shall be competent for the Court of Sessions, upon the application of either party, to be made at the hearing, to state a case for the opinion of the Supreme Court upon any question of law arising upon the trial, and the opinion of the Supreme Court shall govern the determination of the Court of Sessions.

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## 33 VIC., CAP. 6.

### An Act to amend an Act passed in the Twenty-seventh year of the reign of Her present Majesty, entitled "An Act for the amendment of the General Water Company Acts, and also of the Act for the Incorporation of the Harbour Grace Water Company."

[Passed 9th May, 1870.]

Section
1.—Power given to Harbour Grace Water Company to open and construct drains, &c.
2.—Proprietors of houses, &c., must make drains, &c.
3.—In default of proprietors making drains, the Harbour Grace Water Company, after ten days' notice in writing, may construct drains, &c., and the cost and expenses shall be paid by proprietors.
4.—Mode of payment for said drains or sewers.
5.—Mode of recovery.
6.—Notice to be given to Harbour Grace Water Company of opening drains, &c.
Section
7.—To defray the costs of such works the necessary funds may be raised by loan not to exceed $12,000. Proviso.
8.—Funds for payment of debentures, how raised. Assessment, how ascertained and recovered.
9.—Annual assessment to defray interest on debentures.
10.—Assessments upon ground rents held to be landlords taxes.
11.—The interest of debentures to be defrayed by additional assessments, &c.
12.—Limits of the town of Harbour Grace, how defined. Schedule.

Whereas it is expedient to amend the said Acts:

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

1. That it shall be lawful for the Harbour Grace Water Company, subject to the directions of the Governor in Council, to open and construct, throughout the town of Harbour Grace and the several places and streets thereof, such and so many drains and sewers as may be necessary for the efficient drainage and sewerage of the same.

2. That the said Water Company shall be empowered to compel all proprietors of houses and buildings in the said town of Harbour Grace to make or construct one or more sufficient covered drains or sewers, of imperishable materials, and not less than fifteen inches square, leading from such houses and building, or from the yard (if any) belonging to the same,

to and into some public drain or sewer within the said town, or to and into some place of deposit to be approved of by the directors of the said Water Company.

**3**. That should any person or persons, being proprietor or proprietors of houses and buildings aforesaid, refuse to make and construct such covered drains communicating with the sewers as aforesaid, it shall be lawful for the said Harbour Grace Water Company, their servants or contractors, after ten days' notice in writing to such party, to enter into and upon said houses and buildings or yards as the case may be, and there to make and construct one or more sufficient covered drains or sewers leading to the main drain or sewers as aforesaid; and the cost and expenses of such drains connecting with the said main sewer or sewers shall be paid by the said parties, who shall be liable for the same, as provided for by this Act.

**4**. That the payment for the construction of the said drains or sewers in the eighth section of this Act, shall be made and contributed for in the following proportions, viz.:—Parties who have built on land or are assignees, where there is a term of under seven years to run, the whole to be paid by the landlord; when the term is from seven to fourteen, one-third to be paid by the lessee or assignee, and two-thirds by the landlord; when from fourteen to twenty-one years, two-thirds by the lessee or assignee, and one-third by the landlord.

**5**. That the costs and expenses of such drains connecting with the main sewers aforesaid, when made or constructed by the said Harbour Grace Water Company, shall be recoverable by an action or actions, to be brought, tried, and determined in a summary manner, in the name of the said Harbour Grace Water Company, before the Court of Sessions for the district of Harbour Grace; and shall, with costs to be levied upon the party so in default by warrant of distress or attachment, be applied to the cost and expense of such connecting drains as are before mentioned.

**6**. That any proprietor or proprietors of any such houses, building or yard aforesaid, who shall himself make and construct any such drain or sewer aforesaid, shall, before proceeding with the same, give two days' notice to the said Harbour Grace Water Company of his intention in that behalf; and such construction shall be subject to the supervision and control of the said Harbour Grace Water Company, in order that it may be effectual for the purpose for which it is designed, and may not in any way damage or interfere with the construction or flow of main drains

**7**. For the purpose of raising the necessary funds for defraying the cost of such works, it shall be lawful for the Receiver General to raise by loan, by means of tender, and such tenders shall be made upon reasonable notice to be given in the public papers, a sum not exceeding twelve thousand dollars; for which loans debentures shall be issued bearing interest at a rate not exceeding [six per cent.]*(h)* per annum, and payable at the

*(h)* Altered to five per cent. by 34 Vic., cap. 5, sec. 1.

expiration of twenty-five years from the issuing thereof; and such debentures shall be in the form prescribed in the schedule annexed, and shall be signed by the Receiver General, and countersigned by the Colonial Secretary: Provided that no larger sum than two thousand dollars be expended on the said works in any one year.

8. The funds for the payment of said debentures shall be raised by one or more assessments upon the proprietors in perpetuity of the lands situate in the limits of the town of Harbour Grace, as defined by this Act, in proportion to the value of their respective properties; and for the purpose of ascertaining and recovering the amount of such assessment it shall be lawful for the Governor in Council from time to time to make such orders as he shall consider necessary for effecting and revising an appraisement of the said lands, and for the imposition and collection of the said assessments: Provided that no one of such assessments shall be made or levied until after the expiration of twenty-five years after the passing of this Act.

9. [The annual assessment for defraying the interest upon such debentures shall be recovered by the directors of the General Water Company by the means prescribed in the Acts for the incorporation and management of the said company, and shall be by the said directors paid over to the Receiver General, to be by him applied as a distinct and separate fund for the purposes of this Act.]*(i)*

10. All assessments upon ground rents under this Act shall be held to be landlords' taxes, and shall be paid by the ground landlord, any provision in any future contract to the contrary notwithstanding.

11. The interest of such debentures shall be defrayed by an addition to the assessments and rates annually payable under the Acts for the incorporation and management of the said Harbour Grace Water Company; such additions to be made in manner prescribed in the said Acts, and to include proportionate annual assessments upon the ground rents shown by the revised returns of the appraisers of the said Water Company, to be payable upon lands within the limits of the said town as defined by this Act; and such additional assessments shall be recovered in like manner as rates and assessments under the said Water Company Acts.

12. That the limits of the town of Harbour Grace shall be defined to be from the road leading to Carbonear on the east, and Mayne's Brook, so called, on the west, the sea or harbor on the south, and one hundred yards from Harvey street north, on the north.

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*(i)* Repealed by 34 Vic., cap. 8, sec. 4.

SCHEDULE.

I, A. B., of , Receiver General of Newfoundland, hereby certify that I have received, by way of loan, from C. D., $ , bearing interest payable half yearly, at the rate of six *(j)* per cent. per annum; and I further certify that the said principal sum of $ will be repaid to the said C. D., at my office, at St. John's, on the expiration of twenty-five years from this date.

Given under my hand at St. John's, this day of , A. D. 18 .

A. B.,
*Receiver General.*

Certified,

E. F.,
*Colonial Secretary.*

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# 34 VIC., CAP. 8.

**An Act to amend an Act passed in the Thirty-third year of the reign of Her present Majesty, entitled "An Act to amend an Act passed in the Twenty-seventh year of the Reign of Her present Majesty, entitled 'An Act for the amendment of the General Water Company Acts, and also of the Act for the Incorporation of the Harbour Grace Water Company.'"**

[Passed 24th April, 1871.]


Section
1.—Interest reduced from six per cent. to five per cent.
2.—Annual assessment to defray interest on debenture, how recovered.
3.—Remedy provided to compel payment by any person liable to contribute under this Act, residing out of electoral district.
4.—Ninth section of Act thirty-third Victoria, chapter six, repealed.


Whereas it is expedient to amend an Act passed in the thirty-third year of the reign of Her present Majesty, entitled "An Act to amend an Act passed in the twenty-seventh year of the reign of Her present Majesty, entitled 'An Act for the amendment of the General Water Company Acts, and also of the Act for the incorporation of the Harbour Grace Water Company.'"

Be it therefore enacted by the Governor, Legislative Council and Assembly, in legislative session convened, as follows:

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*(j)* Altered to five per cent. by 34 Vic., cap. 8, sec. 1.

1. That the interest on the debentures referred to in the seventh section in the said in part recited Act, shall be five per cent. instead of six per cent, as therein mentioned; and that five per cent be substituted for six per cent. in the schedule therein referred to.

2. The annual assessment for defraying the interest upon such debentures shall be recovered by the directors of the Harbour Grace Water Company, by the means prescribed in case of assessment in the Acts for the incorporation and management of the said company, and shall be by the said directors paid over to the Receiver General, to be by him applied as a distinct and separate fund for the purposes of this Act.

3. That when any person who shall be liable to contribute under this Act for any rate or assessment to the said company, and who shall reside out of the electoral district of Harbour Grace, and who shall not have any known agent there, or in the absence of such person from this colony, who shall have no known agent therein, it shall be sufficient, in default of payment of such rate or assessment, and after a notice posted on the door of the Court House, of such indebtedness for substituted service, to be made upon the Clerk of the Peace, in Harbour Grace aforesaid, of any process to compel such payment.

4. That the ninth section of the said Act thirty-third Victoria, chapter six, be and the same is hereby repealed.

# 44 VIC., CAP. 10.

## An Act to enable the Harbour Grace Water Company to extend the Capital Stock of the said Company, and for other purposes.

[Passed 9th May, 1881.]

Section 1.—Power to Harbour Grace Water Company to increase stock $8,000.

Whereas by the provisions of the Act 26th Vic., cap. 5, incorporating the Harbour Grace Water Company, the capital stock of the said company was limited to the sum of ten thousand pounds, with permission to extend the same to the sum of twelve thousand pounds, if necessary;

And whereas the said company has, under the provisions of the said Act, extended its said capital to the full amount authorized by the said Act: And whereas it has become necessary, by reason of the increased requirements of the said company, that its capital stock should be extended to a still greater amount;

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

1. The Harbour Grace Water Company shall have power to increase the capital stock of the said company by the further amount of eight thousand dollars, subject in all respects to the provisions of the said Act and the Acts in amendment thereof, and such further stock shall have the like advantages as heretofore provided with respect to the stock first subscribed.

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## 50 VIC., CAP. 17.

### An Act to enable the Harbour Grace Water Company to extend the Capital Stock of the said Company, and for other purposes.

[Passed 18th May, 1887.]

Section
1.—Increase of capital stock by $12,000.
2.—Special appraisement.
3.—Power to lay water pipes.
4.—Company to provide a sufficient supply of water.

Whereas by the provisions of the Act 26th Vic, cap. 5, incorporating the Harbour Grace Water Company, the capital stock of the said company was limited to the sum of ten thousand pounds, with permission to extend the same to the sum of twelve thousand pounds, if necessary;

And whereas the said company, under the provisions of the said Act, extended its capital stock to the full amount authorized by the said Act; and whereas by reason of the increased requirements of the said company it subsequently became necessary to extend the capital stock by a further amount of eight thousand dollars;

And whereas it has become necessary, in order that certain localities may be efficiently supplied with water, to still further increase the capital stock of the said company;

Be it enacted by the Administrator of the Government, the Legislative Council and House of Assembly, in Legislative Session convened, as foilows:

1. The Harbour Grace Water Company shall have power to increase the capital stock of the said company by the further amount of twelve thousand dollars, subject in all respects to the provisions of the said Act and the Acts in amendment thereof, and such further stock shall have the like advantages as heretofore provided with respect to the stock first subscribed.

**2**. It shall be lawful for the said directors, in the interval between the regular appraisements, to cause special appraisements and returns to be made of any rent, insurable interest or rent value of or in any house or building newly erected within the limits aforesaid, or then recently supplied with service pipes, or then recently arising by expiry of lease or otherwise: Provided that in all cases of special appraisements under this section the books of appraisement shall be deposited with the Clerk of the Peace, and be open to examination and subject to objection in the manner and for the periods prescribed by section 21 of the Act passed in the twenty-seventh year of the reign of Her present Majesty, entitled "An Act for the amendment of the General Water Company Act, and also of the incorporation of the Harbour Grace Water Company," and the Court of Sessions shall be held for the revision of such appraisements, and such other notices and proceedings given and held in relation thereto, as provided in the said twenty-first section of the said Act; and upon such revision the said appraisements shall, for the purposes thereof, be final and binding until the next general appraisement; and the rents, interests and rent values so appraised shall be and become liable to the general rates and assessments then in force under the resolution of the directors next preceding any such appraisement, which rates and assessments shall be due and payable at the times and in the manner prescribed by existing enactments in respect of other rates and assessments, and the first payments shall become due on the first day of January or July next following any such appraisement and revision.

**3**. It shall be lawful for the said company to break, dig and trench in Harvey street, in the town of Harbour Grace, and such other streets as may be necessary for the laying down of additional water pipes, observing all due precautions for the safety and convenience of the public.

**4**. It shall be obligatory upon the company to cause a sufficient supply of pure and wholesome water to be conveyed in pipes and mains through Harvey street aforesaid, and to extend the said supply of water in pipes or mains throughout such other streets and within such other limits as the Governor in Council shall at any time direct.

## 56 VIC., CAP. 16.

### An Act to amend the Acts relating to the Harbour Grace Water Company.

[Passed 24th May, 1893.]

SECTION
1.—A rate of five cents per ton shall be paid by merchant ships.
SECTION
2.—Payment and recovery of rates.
3.—Disposition of moneys.

Be it enacted by the Governor, the Legislative Council and House of Assembly, in Legislative Session convened, as follows:

1. A tax or rate of five cents per ton shall be levied upon every merchant ship or vessel, according to its registered tonnage, which may enter the port of Harbour Grace, other than fishing vessels or vessels engaged in the coasting trade of the colony, said rate or tax to be levied once in every year.

2. Such rates shall be paid, as aforesaid, by the masters or owners of such vessels, and shall be collected and recovered in the same manner and by the same means as light dues are now collected and recovered in the said port.

9. The amount of the rates or taxes so collected shall be paid over to the Harbour Grace Water Company, to be applied to the ordinary purposes of the company.

# 46 VIC., CAP. 21.

## An Act for granting to the Anglo-American Telegraph Company, Limited, certain powers and privileges for the purpose of enabling them to supply their establishments at Heart's Content with Water, and for other purposes.

[Passed 21st April, 1883.]


Section
1.—General powers conferred.
2.—Company may take water from Southern Cove Pond; Land granted; Further powers.
3.—Company may trench public roads.
4.—Entry on private lands for surveys, &c.
5.—Entry and use of private lands.
6.—Compensation; Arbitration.
7.—Notice before arbitration.
8.—On payment or tender, land to vest in Company.
9.—Waste or unauthorized use of water; Penalty.
10.—Penalty for certain other offences.
11.—Saving clause.
12.—Short title.


Whereas the Anglo-American Telegraph Company, Limited, have petitioned for certain powers to be granted to them for the purpose of obtaining a supply of water at Heart's Content, Trinity Bay; and whereas it is expedient that such powers should be granted to the said company:

Be it therefore enacted by the Administrator of the Government, Legislative Council and Assembly, in Legislative Session convened, as follows:—

**1**. All powers and authority which it may be necessary or expedient for the said company to obtain for the purpose of procuring and maintaining a full supply of water for their establishments in Heart's Content, from the lake or pond mentioned in the next following section, are hereby conferred upon and granted to the said company.

**2**. The company may take all water necessary for the purpose of procuring and maintaining such supply from the lake known as Southern Cove Pond, near Heart's Content, for such supply of water, and all wild and unoccupied land over which the track of the pipes used for conveying said water supply to Heart's Content from the said lake or pond, shall pass, to the extent of twenty-feet on each side of such track, shall belong of right to, and vest in the said company, subject to the reservation now contained in Crown grants in the colony, and to all public rights of way. And the said company may, from time to time, sink such wells or shafts, and make, maintain, alter or discontinue such reservoirs, water works, cisterns, tanks, aqueducts, drains, cuts, sluices, pipes, culverts, engines or other works, and erect such buildings upon the lands, and in, upon, or adjacent to, such lake or pond authorized to be taken by them, as they shall think proper, for the purposes for which this Act is passed, and may take and use such quantity of water from the said lake or pond as may be, from time to time, necessary for the said purposes.

3. For the purpose of procuring and maintaining such water supply, the company may at all times, where necessary, break open and trench all public roads, for the purpose of laying or repairing, renewing, replacing, or altering said pipes or other works, aforesaid, or erecting, or repairing, renewing, replacing or altering hydrants or other works, aforesaid, or for other purposes connected with the said supply, and immediately such work has been completed, such public roads shall be restored by the company to their former condition, and in carrying out such works all due precaution for the safety and convenience of the public shall be used by the said company.

4. For all purposes of survey and estimating said work, the company and its servants may enter upon all private lands.

5. The said company, their servants, and all other persons employed by them, may, after compensation, paid or tendered to the owners of all such private lands as they may require for the purpose of such water supply, enter upon and use the land required for such work.

6. The amount of compensation to be paid for private lands taken by the said company under the authority of this Act, or for any damage thereto done by them, shall be ascertained and decided by arbitration at the expense of the company, either by the award in writing of one arbitrator, appointed jointly by the company and the owner of the land; or else by the award in writing of any two arbitrators, one appointed by the company and the other by such owner, with power to such arbitrators to appoint an umpire, and in case of their being unable to agree upon an umpire, or the owner of such land refusing to submit to arbitration, a judge of the Supreme Court may appoint an umpire and order reference to arbitration and all submissions to arbitration, under this Act may be made rules of court.

7. The company shall, at least ten days before proceeding to such arbitration, post upon the door of the Court House in Heart's Content, a description of all private lands required for the purposes of this Act, and such notice shall state the time and place where such arbitration is proposed to be held.

8. Upon payment or tender by the company of the amount of such award to the owner or person interested in private land so taken by the said company, such land so taken, to the extent of twelve and a-half feet on each side of the main pipe, shall thereupon vest in and become the property of the company.

9. Any person using the said water supply without the consent of said company, or wasting the same wilfully, or interfering with, or interrupting, the officers or watermen employed by the said company in the exercise of any of their powers herein contained, shall be liable, on summary conviction before a justice of the peace, to a fine not exceeding fifty dollars, or, in default of payment, to three months imprisonment,

**10.** Every person who shall commit any of the offences next hereinafter enumerated, shall, for every such offence, forfeit to the company a sum not exceeding twenty-five dollars, that is to say:—

(1.) Every person who shall bathe in the said lake or stream, reservoir, aqueduct, or other water works, belonging to or used by the company, or wash, throw, or cause to enter therein, any dog or other animal.

(2.) Every person who shall throw any rubbish, dirt, filth, or other noisome thing into the said lake, or any other stream, reservoir, aqueduct, or other works, aforesaid, or wash, or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes, or any other thing.

(3.) Every person who shall cause the water of any sink, sewer, or drain, steam engine, boiler, or other filthy water belonging to him or under his control to run or be brought into the said lake, or any such stream, reservoir, aqueduct, or other water works, belonging to the company, or shall do any other act whereby the water of the company shall be fouled.

And every such person shall forfeit a further sum of five dollars for each day, (if more than one), that such last mentioned offence shall be continued.

**11.** Nothing in this Act shall be construed to give to the said company an exclusive right to the said lake, or to obtain water therefrom.

**12.** This Act may be cited for all purposes as "The Heart's Content Water Supply Act, 1883."

# 47 VIC., CAP. 6.

## An Act to Incorporate the Carbonear Water Company.

[Passed 22nd April, 1884.]


Section
1.—The Honourable John Rorke and others united into a company for the purposes of this Act.
2.—Capital stock of the company $30,000, in fifteen hundred shares of $20 each.
3.—Capital stock may be extended to $50,000.
4.—By whom certificates of stock issued by company shall be signed, amount of interest payable thereon, when and by whom paid.
5.—When first general meeting of stockholders to be held, and how summoned.
6.—When meetings may be for special purposes.
7.—Mode of voting at meetings of stockholders.
8.—Four directors shall form a quorum; mode of electing a president; statement of affairs of company to be laid before them at annual meeting.
9.—Shares in the stock assignable.
10.—Shares liable to attachment.
11.—Company may dig trenches in streets, &c.
12.—Mode of compensating parties for lands taken or damaged.
13.—Penalty for using water without consent of company.
14.—Penalty for obstructing company in the exercise of the powers vested in them by Act.
15.—Annual statement to be transmitted to Colonial Secretary.
16.—After the expiration of twenty years Government may purchase the works of the company.
17.—Streets through which water in pipes and mains must be conveyed.
18.—Directors may establish rates, &c., subject to control of the Governor.
19.—Owners of houses within certain limits to pay rates imposed under last section; Exempting public buildings, &c.; Proviso as to supply for manufacturing.

Section
20.—Appraisers to be appointed by Governor.
21.—Books of appraisement to be open to examination; Court of revision.
22.—Secretary to act as collector and give bonds, &c.; Duties of collector.
23.—Judgments, &c., of stipendiary Magistrates in suits for recovery of rates to be final; stipendiary Magistrate may state a case for opinion of Supreme Court.
24.—Rate to be paid on all vessels entering port of Carbonear, and collected in same manner as light dues; Proviso.
25.—On payment of rates vessels entitled to water.
26.—Company may open drains and sewers.
27.—Company may compel proprietors of houses to make drains from houses to public drains.
28.—In default of owners making drains, company, after notice, may construct drains, &c., and recover cost from owners; Mode of contribution by owners or lessees.
29.—Mode of recovery of cost of drains from houses constructed by the company.
30.—Proprietor constructing such drain to notify the company.
31.—Mode of service on person residing out of electoral district, &c.
32.—Directors and servants to have access to buildings where water delivered.
33.—Directors may make regulations to prevent waste, &c.; Regulations to be published.
34.—Cisterns, &c., supplied with water by company to be constructed so as to prevent waste, &c.; otherwise company not bound to supply water.
35.—Penalty for hindering, &c., directors, &c., in exercise of powers.
36.—Company may cut off water in certain cases.
37.—Houses of less value than $28 per annum exempt from rates.


Whereas it is expedient to provide for a sufficient supply of water in the town of Carbonear by the incorporation of a company formed for that purpose upon the conditions hereinafter mentioned:

Be it therefore enacted by the Administrator of the Government, the Legislative Council and Assembly, in Legislative Session convened, as follows:—

1. The Honourable John Rorke, William Duff, Edgar Penney, B. T. H. Gould, Robert Balmer, and all such other persons as may have associated with them for the purposes aforesaid, or may hereafter become

stockholders in the said company, and their respective successors, executors, administrators and assigns, shall be, and they are hereby united into company for the purposes aforesaid, and shall be a body corporate and politic in law, in fact and in name, by the style of "The Carbonear Water Company," and by that name shall have perpetual succession and a common seal, with power to alter the same, and shall be capable in law of suing and being sued, impleading and being impleaded, in all courts and places whatsoever, and shall, and may purchase, hold, receive, and assign lands and chattels, and do all such matters and things as may be necessary for the business of the said corporation, and as to them, as such body politic and corporate, shall pertain to do.

**2.** The capital stock of the said company shall consist of thirty thousand dollars, being in fifteen hundred shares of twenty dollars each, payable at such time as the directors of the said company for the time being may appoint, and such sum, or so much thereof as may be necessary, shall be applied to the purposes of constructing, completing, and maintaining the water, sewerage, and other works of the said company, and for carrying into effect the purposes of this Act: Provided that, if the instalments payable by any stockholder shall not be paid at the time appointed by the directors, or within ten days thereafter, the amount paid up by such defaulter shall be forfeited, and his share in the said company sold on his account at public auction for the highest price that can be had for the same.

**3.** If found necessary for the purposes of this Act, it shall be competent for the company, at a general meeting of the stockholders to be called in manner hereinafter directed, to extend their capital stock to the amount of fifty thousand dollars, in the whole, or of such proportion thereof as may be requisite, and such further stock shall be distributed in shares of the like amount, and be payable as before directed, and shall have the like advantages in all respects as are hereinbefore provided with respect to the stock first subscribed, but such extension shall not take place without the assent of the Governor in Council.

**4.** All certificates of stock issued by the said company shall be signed by the president and countersigned by the secretary of the said company, and certified by the Colonial Secretary, and the holders thereof shall, on the production thereof to the president of the said company, be entitled to receive out of the funds at the disposal of the said company interest upon the amount of such stock at the rate of four per cent. per annum, and in default of payment by the said company the said holders, upon production thereof at the office of the Receiver General, shall be entitled to receive from the funds of the colony the said interest, which interest, whether paid by the company or colony as aforesaid, shall be paid on the first day of January and July in each year.

**5.** As soon as the necessary amount of capital shall be subscribed, the first general meeting of stockholders shall be held at Carbonear at a

time and place to be appointed by the parties named in the first section of this Act, or a majority of them, upon fourteen days' notice, in at least two newspapers, of which the *Royal Gazette* shall be one ; and such meeting shall appoint seven persons, being each a proprietor of at least twenty shares, to be directors of the company for the then ensuing year, and upon the first Monday in July in each succeeding year during the existence of the company a like general meeting for the like purposes and upon the like notice shall be held at the place aforesaid.

6. The directors may at any time, of their own accord or upon the requisition of the holders of five hundred shares, call a general meeting of the stockholders for any special purpose, notice being given in manner aforesaid.

7. At all general and annual meetings the stockholders shall vote by ballot, the holders of five shares being entitled to one vote, and so on for every five shares ; holders of less than five shares shall not be entitled to vote at such annual or general meetings. Rules and bye-laws may be passed for the government of the company and the management of its business, and absent shareholders may vote by agents duly constituted for such purpose by written authority ; provided that such agent shall be a shareholder in the said company.

8. Of the directors to be elected as aforesaid, four shall form a quorum ; they shall elect a president from among their number, and in case a vacancy shall arise on the board by the death, resignation, or absence from the colony of any member, the remaining directors shall fill up the vacancy from amongst the stockholders, the person so appointed holding office until next annual meeting. At every annual meeting the directors shall lay before the meeting a full and unreserved statement of the affairs of the company ; they shall have power to appoint such officers and at such salaries as they may consider necessary for the general management of the company's affairs and business, but such salaries shall, before being finally adopted by the company, receive the approval of the Governor in Council.

9. The shares in the stock of the company shall be assignable by indorsement, but under and subject to such rules as may be provided in that behalf ; and no assignment of any share shall be valid unless the assignor shall have paid off all his liabilities actually due to the company, and until such assignment shall be entered in a book to be kept for that purpose.

10. The shares of any stockholders in the said company shall be liable to attachment and execution by the service of a warrant of attachment on the president or secretary of the company, and such service shall bind the shares of such stockholder for all beyond the amount of his liabilities actually due to the company ; and upon the production of a bill of sale from the sheriff, of such shares, or upon an order of court to that effect, the directors shall register a transfer of such shares to the purchasers thereof by virtue of the provisions of this Act.

11. It shall be lawful for the said company to break, dig and trench the streets, squares, public places and lands in and near the town of Car-

bonear, as may be necessary, observing all proper precautions for the safety and convenience of the public, and for the purposes of this Act, from time to time, after compensation made or tendered to the owner in that behalf, to enter upon, excavate, trench, possess and hold, as the property of the company, the lands of private parties in or near the said town.

. Should any person whose land shall have been so entered upon, excavated or taken as aforesaid, deem the amount tendered to him by the company insufficient compensation for any injury sustained by him by any act of the company, their agents or servants, or for any portion of his land, tenements, or premises appropriated or used by the company, it shall be competent for such person to appoint one arbitrator, and the said company another, and such two arbitrators shall appoint a third, and the award of any two of them, signed by them, after hearing both parties and their witnesses as to such compensation, shall be final and binding. Should either party neglect or refuse, upon being required by the other to appoint an arbitrator within ten days after being so required, or should the two arbitrators when so appointed not agree to the appointment of a third within ten days after their appointment, it shall be lawful for the Supreme Court of this island, or any judge thereof upon the application of either party, to appoint an arbitrator for the party refusing, omitting or neglecting to make such appointment, and the arbitrator when so appointed shall have the same power in all respects as if appointed by either party, or by the two arbitrators.

**13.** If any person shall in any way obtain or use the water of the said company without the consent of its proper officers, or shall wrongfully waste the same, such offender shall forfeit a sum not exceeding forty dollars, to be recovered with costs in an action at the suit of the company in any Court of record: Provided that this section shall not extend to parties taking water from the public fountains hereinafter mentioned, nor to any use of the said water in case of a fire occurring in the said town.

**14.** If any person shall wilfully and maliciously put out of order, injure or destroy any pipe, fountain, hydrant, or any other work or material of the said company, such offender, on conviction, in a summary manner before any justice of the peace, shall forfeit a sum not exceeding twenty-five dollars, with costs of suit, and shall also pay upon the order of such justice a sum equal to the amount of the damage so occasioned by him; and in default of such payment shall be imprisoned for a period not exceeding three calendar months; and it shall be lawful for any person who may witness the commission of such offence to apprehend without warrant, and for any other person to assist in apprehending such offender, and to convey him before a justice to be dealt with in manner aforesaid.

**15.** Copies of the annual statement of the company's affairs shall be transmitted to the colonial secretary within twenty days after the annual meeting. The government shall have power at all times to inspect the books of the company.

**16.** If at any time after twenty years from the passing of this Act, it shall be deemed advisable by the Governor in Council, with the assent of the legislature, that the water works and other property of the said company shall be transferred to, and vested in the government of this colony, it shall be lawful for the Governor to cause a written notice to be given to the said company, which shall be served upon the president, secretary, director, or manager of the said company in this colony, which notice shall state that the government has decided upon becoming the holder of the said water works and other property, and is prepared to pay the shareholders in the said company, upon production of their certificates as aforesaid, the amount of stock they may hold in the said company as shown by the said certificates, together with four per cent. interest from the time of the last payment of interest upon the amount of such stock; and after the expiration of one year from the time of the service of such notice, and the payment or tender of payment of principal and interest to the stockholders as aforesaid, all and singular the said water works and other property of the said company shall become the property of Her Majesty, for the benefit and public use of the colony, and shall be thenceforth held free and discharged from all claims of the said company or stockholders thereof, or any person whomsoever, and the Governor shall draw warrants on the Receiver General of this colony for the payment of the several stockholders in the said company, of the principal and interest as aforesaid.

**17.** It shall be obligatory upon the company to cause a sufficient supply of pure and wholesome water to be conveyed in pipes and mains through such streets in the said town as the Governor in Council may direct, and to erect in such places as the Governor in Council may direct, fountains for the supply of water to the poor, and to establish hydrants throughout the said town, as the Governor in Council may think necessary.

**18.** It shall be lawful for the directors of the said company, subject in all cases to the approval and control of the Governor in Council, from time to time, to fix and establish water rates and assessments under this Act, at such amounts as may be necessary for the purposes of this Act: all which rates and assessments shall be levied, collected, and paid in advance half-yearly: Provided always, that notice of any change in the rates of assessment aforesaid shall be given by publication in the *Royal Gazette*, and that the minute of Council confirming the same shall be laid before the legislature at the next ensuing session.

**19.** As soon as the water works shall be in operation, the owners and occupiers of all houses and other buildings along which pipes shall have been laid, and within two hundred yards of any such pipes, shall pay semi-annually in advance, in manner herein provided, the rates and assessments imposed by the eighteenth section of this Act: Provided that Government buildings, churches, public school-houses, and buildings belonging to charitable bodies shall be exempt from the assessment: Provided also, that in establishing any water rate regard be had, not only to the rent value of the premises supplied with water, but also to

the quantity of water which may be supplied, whether for trading, manufacturing, shipping, or other purposes.

**20.** For the purpose of ascertaining the amount of such water rates and assessments, it shall be lawful for the Governor in Council, from time to time as may be necessary, to appoint one or more appraisers, who shall be sworn before a Justice of the Peace faithfully to discharge the duties of their office; and it shall be the duty of such appraisers to appraise the ground rents of all houses and other buildings along which the pipes of the said company shall have been laid, and within two hundred yards of such pipes; also the profit rent of such houses and buildings, and also the rent value of the same, at such time and times as may be deemed necessary by the Governor in Council during the continuance of this Act; and when such appraisement shall be completed they shall deposit the book or books of such appraisement with the Clerk of the Peace for Carbonear, or such other person as the Governor in Council may appoint for such purpose.

**21.** Such book or books of appraisement shall be open to the examination of all parties interested therein, and, after the expiration of fourteen days after it or they shall have been so deposited, the stipendiary Magistrate for Carbonear shall, at certain times within fourteen days thence following, to be notified in a public newspaper in St. John's and Harbour Grace or Carbonear, hear and determine applications for the revision of such appraisement; and it shall be competent for any person therein interested, by a notice in writing to be filed in the office of the said stipendiary Magistrate and served on the said appraisers or two of them within the fourteen days first mentioned, to object to the amount for which his property or interest therein may have been appraised, which objection the said stipendiary Magistrate shall hear and determine, and amend or confirm the appraisement accordingly; and, after the expiration of the time fixed for such revision, the said appraisement shall be final and binding on all parties until a new appraisement and revision shall have been made.

**22.** The secretary of the said company shall be collector, and shall give sufficient security faithfully to discharge the duties of his office as such collector, and shall, after the completion of such appraisement, and as soon as the directors of the said company shall have ascertained the amounts to which the several parties mentioned or interested therein shall be liable to pay towards the said water rates and assessments, which they are hereby authorized to do, collect from the parties respectively liable in that behalf their contributions towards such water rates or assessments; and in case any person so liable shall neglect or refuse to pay such contribution, the same may be recovered with costs in a summary manner by a suit before the stipendiary Magistrate for Carbonear, to be brought in the name of the said company: Provided that service of process upon the agent of any absent or non-resident defendant shall be service upon the principal, and also that in any action it shall be deemed

good service of process upon the defendant if the same be left at the residence of the defendant.

**23**. All judgments, orders or proceedings of the said stipendiary magistrate hereafter to be made or had in any suit or action for the recovery of such water rates or assessments, or either of them, shall be final and binding upon the parties thereto; and no such suit, action, judgment, order or proceeding shall be removable by *certiorari* or otherwise: Provided that in any action for a rate or assessment above forty dollars, it shall be competent for the stipendiary magistrate, upon the application of either party, to be made at the hearing, to state a case for the opinion of the Supreme Court upon any question of law arising upon the trial, and the opinion of the Supreme Court shall govern the determination of the stipendiary magistrate.

**24**. There shall be paid by the masters or owners of all vessels entering the port of Carbonear a rate of five cents per ton on the register tonnage of such vessels, which rate shall be applied to the support of the company, and shall be collected and recovered in the same manner and by the like means as the light dues are now collected and recovered in the said port of Carbonear, or by summary proceedings before the stipendiary magistrate for Carbonear, as other assessments are herein provided to be recovered: Provided that no vessel shall be compelled to pay water rates oftener than once in one year, nor to a greater amount, whatever its tonnage may be, than twenty dollars.

**25**. In consideration of the payment of such rates, the vessels paying the same shall be entitled to receive from the hose of the company, at any wharf, within reach from the hydrant, at which such vessel may lie, a full supply of water upon each occasion of such payment without further charge, and the master shall also be at liberty upon all other occasions to take water from any of the public fountains in the said port.

**26**. It shall be lawful for the said company, subject to the directions of the Governor in Council, to open and construct throughout the town of Carbonear, and the several places and streets thereof, such and so many drains and sewers as may be necessary for the efficient drainage and sewerage thereof.

**27**. The said water company shall be empowered to compel all proprietors of houses and buildings in the said town of Carbonear to make and construct one or more sufficient covered drains or sewers of imperishable materials, and of not less than eight inches diameter leading from such houses and buildings, or from the yard, if any, belonging to the same, to and into some public drain or sewer within the said town, or to and into some place of deposit to be approved of by the directors of the said water company.

**28**. Should any person or persons, being proprietor or proprietors of houses and buildings aforesaid, refuse to make and construct such covered

drains communicating with the sewers as aforesaid, it shall be lawful for the said Carbonear Water Company, their servants or contractors, after ten days' notice in writing to such party, to enter into and upon said houses and buildings, or yards, as the case may be, and thereto make and construct one or more sufficient covered drains or sewers leading to the main drains or sewers as aforesaid; and the cost and expenses of such drains connecting with the said main drains or sewers shall be paid by the said parties, who shall be liable for the same as provided for by this Act, and that the payment for the construction of the said drains or sewers in the twenty-sixth and twenty-seventh sections shall be made and contributed for in the following proportions, namely: Parties who have built on lands or are assignees, where there is a term of under seven years to run, the whole to be paid by the landlord; when the term is from seven to fourteen, one-third to be paid by the lessee or assignee, and two-thirds by the landlord; when from fourteen to twenty-one years, two-thirds by the lessee or assignee, and one-third by the landlord.

**29**. The cost and expenses of such drains connecting with the main sewers aforesaid, when made or constructed by the said Carbonear Water Company, shall be recoverable by an action or actions to be brought, tried and determined in a summary manner in the name of the said Carbonear Water Company, before the stipendiary Magistrate for Carbonear, and shall, with costs to be levied upon the party so in default by warrant of distress or attachment, be applied to the cost and expenses of such connecting drains as are before mentioned.

**30**. Any proprietor or proprietors of any such house, building, or yard aforesaid, who shall himself make and construct any such drain or sewer as aforesaid, shall, before proceeding with the same, give two days' notice to the said Carbonear Water Company of his intention in that behalf, and such construction shall be subject to the supervision and control of the said Carbonear Water Company, in order that it may be effectual for the purpose for which it is designed, and may not in any way damage or interfere with the construction or flow of main drains.

**31**. When any person shall make default in the payment of any rate or assessment payable by virtue of this Act, and such person shall reside out of the electoral district of Carbonear or be absent from the colony, and shall not have any known agent in the said district, or in the absence of such person from this colony he shall have no known agent therein, notice of such indebtedness shall be posted on the door of the Court House at Carbonear, and served upon the person in psssession of the premises for which the rate is payable, or, if no person be in possession, affixed upon some part of the said premises, and such affixing of notice or service shall be deemed good service, and judgment may be entered by default against the person liable for such rate or assessment as if such person had been personally served with a summons; provided the stipendiary Magistrate shall so order.

**32**. The directors of the said company, and every person authorized by them for that purpose, shall have free access between the hours of eleven in the morning and four in the afternoon, to all parts of every building in which water from the pipes of the said company is delivered and consumed.

**33**. The directors of the said company may, from time to time, with the approval of the Governor in Council, make such regulations as shall be necessary or expedient for the purpose of preventing the waste or misuse of water, and therein, amongst other things, to prescribe the size, description, strength and location of the pipes, cocks, cisterns and other apparatus to be used, which regulations shall be published in the *Royal Gazette* and one other newspaper for one month previous to coming into operation.

**34**. Every cistern, or other receptacle for water, and every closet, soil-pan and bath which shall be supplied with water by the company shall be so constructed and used as effectually to prevent the waste, misuse, or undue consumption of water, and the flow or return of foul air or other noisome or impure matter into the mains or pipes of the company, or into any pipes connected or communicating therewith; and the company shall not be bound to supply water into any cistern, or other receptacle, or water-closet, soil-pan or bath which shall not be so constructed.

**35**. If any person shall wilfully or maliciously hinder or interrupt, or cause or procure to be hindered or interrupted, the said directors, their managers, contractors, agents or servants, or any person acting under the authority of the said company, in the exercise of any of the powers in this Act authorized or contained, or in any of the regulations to be made as aforesaid, or shall do any act in violation of this Act or the said regulations, such person shall, on conviction thereof, forfeit and pay for every such offence a sum not exceeding forty dollars, to be recovered in the name of the said company in a summary manner before a stipendiary Magistrate, and to be applied to the purposes of the company.

**36**. If any person supplied with water by the said company wrongfully does, or causes, or permits to be done, anything in contravention of any of the provisions of the last two preceding sections, or of the regulations aforesaid, or wrongfully fails to do anything which, under either of the said last two preceding sections or the said regulations, ought to be done for the prevention of waste, misuse, undue consumption or contamination of the water of the said company, the said company may, without prejudice to any remedy against him in respect thereof, cut off any of the pipes by or through which water is supplied by the said company to him or for his use, and may cease to supply him with water so long as the cause of injury remains or is not remedied.

**37**. Occupiers of houses or tenements of less annual value than twenty-eight dollars a year shall be exempt from the payment of water rates.

# 56 VIC., CAP. 11.

## An Act to Incorporate the Placentia Water Company.

[Passed 24th May, 1893.]


Section
1.—Certain persons incorporated as "The Placentia Water Co."
2.—Capital Stock $5,000 in shares of $20 each.
3.—Capital Stock may be extended to $6,000.
4.—Stock certificates—how signed, and the interest thereon payable.
5.—At the first general meeting seven directors shall be elected.
6.—The directors may call general meetings.
7.—Respecting the voting of stockholders at general and other meetings.
8.—Respecting quorum and filling of vacancies amongst the directors.
9.—Shares assignable under certain conditions.
10.—Shares liable to attachment and execution.
11.—Penalty for using water without company's consent.
12.—Penalty for injuries to pipes, fountains, hydrants, &c.
13.—Statement of affairs to be annually transmitted to colonial secretary.
14.—The Government after twenty years may take over water works and stock.
15.—Company shall furnish a sufficient supply of pure water through the town as the Governor may direct.
16.—Directors may fix water rates.
17.—Owners of houses within three hundred yards of pipes shall pay rates.
18.—Respecting appraisers and mode of appraisement.
19.—Revision of appraisement books.
20.—Duties of the collector of the company.
21.—Judgments of Magistrates to be final.

Section
22.—Respecting certain rates to be paid by the masters of vessels.
23.—Vessels paying rates shall receive water from the Company.
24.—A certain duty shall be paid upon coal.
25.—Power of the Company to open streets.
26.—Power of Company to compel the construction of sewers or drains.
27.—Upon the failure to construct sewers, Company may do so and sue for cost thereof.
28.—Mode of procedure.
29.—Before proceeding with construction of sewer notice must be given to the Company.
30.—Respecting the recovery of rates and assessments.
31.—Power of directors and their servants to enter houses.
32.—Power to make rules and regulations.
33.—Respecting the constructing of cisterns.
34.—Penalty for obstructing directors or their servants.
35.—Penalty for wrongful or wasteful use of water.
36.—Houses less than $25 a year exempt from rates.
37.—The Governor may supersede directors.
38.—The power of shareholders to choose directors shall cease in certain cases.
39.—The Governor may appoint a person to manage affairs of Company in lieu of the directors.
40.—Publication of appointments.
41.—Power of Company to enter upon private or public lands.


Whereas it is expedient to provide for a sufficient supply of water in the town of Placentia, by the incorporation of a company formed for that purpose upon the conditions hereinafter mentioned:

Be it enacted by the Governor, the Legislative Council and House of Assembly, in Legislative Session convened, as follows:—

1. Thomas O'Rielly, Edward Sinnott, William G. Bradshaw, John Mooney, Peter O'Rielly, Thomas Bonia, Hugh Fitzpatrick, and all such other persons as may have associated with them for the purposes aforesaid, or may hereafter become stockholders in the said company, and their respective successors, executors, administrators and assigns, shall be, and they are hereby united into a company for the purposes aforesaid, and shall be a body corporate and politic in law, in fact and in name, by the style of "The Placentia Water Company," and by that name shall have perpe-

tual succession and a common seal, with power to alter the same, and shall be capable in law of suing and being sued, impleading and being impleaded, in all courts and places whatsoever, and shall, and may purchase, hold, receive, and assign lands and chattels, and do all such matters and things as may be necessary for the business of the said corporation, and as to them, as such body politic and corporate, shall pertain to do.

**2.** The capital stock of the said Company shall consist of five thou sand dollars, being in two hundred and fifty shares of twenty dollars each, payable at such time as the directors of said Company for the time being may appoint, and such sum or so much thereof as may be necessary, shall be applied to the purpose of constructing, completing and maintaining the water, sewerage and other works of the said company, and for carrying into effect the purposes of this Act: Provided that, if the instalments payable by any stockholder shall not be paid at the time appointed by the directors, or within ten days thereafter, the amount paid up by such defaulter shall be forfeited and his share in the said Company sold on his account at public auction for the highest price that can be had for the same.

**3.** If found necessary for the purposes of this Act, it shall be competent for the Company, at a general meeting of the stockholders to be called in manner hereinafter directed, to extend their capital stock to the amount of six thousand dollars in the whole, or of such proportion thereof as may be requisite, and such further stock shall be distributed in shares of the like amount, and be payable as before directed, and shall have the like advantages in all respects as are hereinbefore provided with respect to the stock first subscribed, but such extension shall not take place without the assent of the Governor in Council.

**4.** All certificates of stock issued by the said Company shall be signed by the president and countersigned by the secretary of the said Company, and certified by the Colonial Secretary, and the holders thereof shall, on the production thereof to the president of the said Company, be entitled to receive out of the funds which shall be annually collected by the said Company under the provisions of this Act, as a first charge thereupon, before the payment of any other monies whatsoever, interest upon the amount of such stock at the rate of four per cent. per annum, and in default of payment by the said Company, the said holders, upon production thereof at the office of the Receiver General, shall be entitled to receive from the funds of the colony the said interest, which interest, whether paid by the Company or colony as aforesaid, shall be paid on the first days of January and July in each year.

**5.** The first general meeting of stockholders shall be held at Placentia, at a time and place to be appointed by the parties named in the first section of this Act, or a majority of them, upon fourteen days' notice in at least two newspapers, of which the *Royal Gazette* shall be one, and such meeting shall appoint seven persons, being each a stockholder, to be direc-

tors of the Company for the then ensuing year; and upon the first Monday in July in each succeeding year, during the existence of the Company, a like general meeting, for the like purposes and upon the like notice, shall be held at the place aforesaid: Provided that the parties named in the first section of this Act shall be the directors of the Company, and exercise the same powers as if appointed by the shareholders under this Act until the stockholders shall at their first meeting appoint directors, from aforesaid.

**6.** The directors may at any time, of their own accord or upon the requisition of the holders of eighty-five shares, call a general meeting of the stockholders for any special purpose, notice being given in manner as aforesaid.

**7.** At all general and annual meetings the stockholders shall vote by ballot, each shareholder being entitled to one vote for every share held by him. Rules and bye-laws may be passed for the government of the Company and the management of its business, and absent shareholders may vote by agents duly constituted for such purpose by written authority: Provided that such agent shall be a shareholder in the said Company.

**8.** Of the directors to be elected as aforesaid, four shall form a quorum; they shall elect a president from among their number; and in case a vacancy shall arise on the board by the death, resignation or absence from the colony of any member, the remaining directors shall fill up the vacancy from amongst the stockholders, the person so appointed holding office until next annual meeting. At every annual meeting the directors shall lay before the meeting a full and unreserved statement of the affairs of the Company; they shall have power to appoint such officers and at such salaries as they may consider necessary for the general management of the Company's affairs and business, but such salaries shall, before being finally adopted by the Company, receive the approval of the Governor in Council.

**9.** The shares in the stock of the Company shall be assignable by endorsement, but under and subject to such rules as may be provided in that behalf; and no assignment of any share shall be valid unless the assignor shall have paid off all his liabilities actually due to the Company, and until such assignment shall be entered in a book to be kept for that purpose.

**10.** The shares of any stockholders in the said Company shall be liable to attachment and execution by the service of a warrant of attachment on the president or secretary of the company, and such service shall bind the shares of such stockholder for all beyond the amount of his liabilities actually due to the Company; and upon the production of a bill of sale from the sheriff of such shares, or upon an order of court to that effect, the directors shall register a transfer of such shares to the purchaser thereof by virtue of the provisions of this Act.

11. If any person shall in any way obtain, or use the water of the said Company without the consent of its proper officers, or shall wrongfully waste the same, such offenders shall forfeit a sum not exceeding forty dollars, to be recovered with costs in an action at the suit of the Company in any Court of record: Provided that this section shall not extend to prevent any person taking water from the public fountains hereinafter mentioned, nor to prevent the use of the said water in case of a fire occurring in the said town.

12. If any person shall wilfully and maliciously put out of order, injure or destroy any pipe, fountain, hydrant or any other work or material of the said Company, such offender on conviction, in a summary manner before any Justice of the Peace, shall forfeit a sum not exceeding twenty-five dollars, with costs of suit. and shall also pay, upon the order of such Justice, a sum equal to the amount of the damage so occasioned by him; and, in default of such payment, shall be imprisoned for a period not exceeding three calendar months, and it shall be lawful for any person who may witness the commission of such office to apprehend, without warrant, and for any other person to assist in apprehending such offender and to convey him before a Justice to be dealt with in manner aforesaid.

13. Copies of the annual statement of the Company's affairs shall be transmitted to the Colonial Secretary within twenty days after the annual meeting. The Government shall have power at all times to inspect the books of the said Company.

14. If at any time after twenty years from the passing of this Act, it shall be deemed advisable by the Governor in Council, with the assent of the Legislature, that the water works and other property of the said Company shall be transferred to, and vested in the Government of this colony, it shall be lawful for the Governor to cause a written notice to be given to the said Company, which shall be served upon the president, secretary, director or manager of the said Company in this colony, which notice shall state that the Government has decided upon becoming the holder of the said water works and other property, and is prepared to pay the shareholders in the said Company, upon production of their certificates as aforesaid, the amount of stock they may hold in the said Company as shown by the said certificates, together with four per cent. interest from the time of the last payment of interest upon the amount of such stock; and after the expiration of one year from the time of the service of such notice, and the payment or tender of payment of principal and interest to the stockholders as aforesaid, all and singular the said water works and other property of the said Company shall become the property of Her Majesty, for the benefit and public use of the colony, and shall be thenceforth held free and discharged from all claims of the said Company or stockholders thereof, or any person whomsoever, and the Governor shall draw warrants on the Receiver General of this colony for the payment of the several stockholders in the said Company of the principal and interest as aforesaid.

15. It shall be obligatory upon the said company to cause a sufficient supply of pure and wholesome water to be conveyed in pipes and mains

through such streets in the said town as the Governor in Council may direct; and to erect in such places as the Governor in Council may direct, fountains for the supply of water, and to establish hydrants throughout the said town, as the Governor in Council may think necessary.

**16**. It shall be lawful for the directors of the said Company, subject in all cases to the approval and control of the Governor in Council, from time to time, to fix and establish water rates and assessments under this Act, at such amounts as may be necessary for the purposes of this Act; all which rates and assessments shall be levied, collected and paid in advance half yearly: Provided always, that notice of any change in the rates of assessments aforesaid shall be given by publication in the *Royal Gazette*.

**17**. As soon as the water works shall be in operation, the owners and occupiers of all houses and other buildings along which pipes shall have been laid and within three hundred yards of any such pipes, shall pay semi-annually in advance, in manner herein provided, the rates and assessments imposed by the sixteenth section of this Act: Provided that Government buildings, churches, public school-houses and buildings belonging to charitable bodies, shall be exempt from the assessment: Provided also, that in establishing any water rate regard shall be had not only to the rent value of the premises supplied with water, but also to the quantity of water which may be supplied, whether for trading, manufacturing, shipping or other purposes.

**18**. For the purpose of ascertaining the amount of such water rates and assessments, it shall be lawful for the Governor in Council, from time to time as may be necessary, to appoint one or more appraisers, who shall be sworn before a Justice of the Peace faithfully to discharge the duties of their office; and it shall be the duty of such appraisers to appraise the ground rents of all houses and other buildings along which the pipes of the said Company shall have been laid and within three hundred yards of such pipes; also the profit rent of such houses and buildings, and also the rent value of the same, at such time and times as may be deemed necessary by the Governor in Council during the continuance of this Act; and when such appraisement shall be completed they shall deposit the book or books of such appraisement with the stipendiary Magistrate of Placentia.

**19**. Such book or books of appraisement shall be open to the examination of all parties interested therein, and, after the expiration of fourteen days after it or they shall have been so deposited, the stipendiary Magistrate at Placentia shall at certain times within fourteen days thence following, to be notified in a public manner, hear and determine applications for the revision of such appraisement; and it shall be competent for any person therein interested, by a notice in writing to be filed in the office of the said stipendiary Magistrate and served on the said appraiser or appraisers within the fourteen days first mentioned, to object to the

amount for which his property or interest therein may have been appraised, which objection the said stipendiary Magistrate shall hear and determine and amend or confirm the appraisement accordingly; and, after the expiration of the time fixed for such revision, the said appraisement shall be final and binding on all parties until a new appraisement and revision shall have been made.

**20**. The collector of the said Company shall give sufficient security faithfully to discharge the duties of his office as such collector, and shall, after the completion of such appraisement and as soon as the directors of the said Company shall have ascertained the amounts to which the several parties mentioned or interested therein shall be liable to pay towards the said water rates and assessments, which they are hereby authorized to do, collect from the parties respectively liable in that behalf their contributions towards such water rates or assessments; and in case any person so liable shall neglect or refuse to pay such contribution, the same may be recovered with costs in a summary manner by a suit before the stipendiary Magistrate for Placentia to be brought in the name of the said Company: Provided that service of process upon the agent of any absent or non-resident defendant shall be service upon the principal, and also that in any action it shall be deemed good service of process upon the defendant if the same be left at the residence of the defendant.

**21**. All judgments, orders or proceedings of the said stipendiary Magistrate hereafter to be made or had in any suit or action for the recovery of such water rates or assessments, or either of them, shall be final and binding upon the parties thereto; and no such suit, action, judgment, order or proceeding shall be removable by *certiorari* or otherwise: Provided that in any action for a rate or assessment above forty dollars, it shall be competent for the stipendiary Magistrate, upon the application of either party, to be made at the hearing, to state a case for the opinion of the Supreme Court upon any question of law arising upon the trial, and the opinion of the Supreme Court shall govern the determination of the stipendiary Magistrate.

**22**. There shall be paid by the masters or owners of all vessels owned in Placentia or Jersey Side, entering the port of Placentia, a rate of three and one-half cents per ton on the tonnage of such vessels, and by the master or owner of all other vessels entering the port of Placentia, except local fishing or coasting vessels, a rate of five cents per ton on the tonnage of such vessels, which rate shall be applied to the support of the Company, and shall be collected and recovered in the same manner and by the like means as light dues are now collected and recovered in the said port of Placentia, or by summary proceedings before the stipendiary Magistrate for Placentia, as other assessments are herein provided to be recovered: Provided that no vessel shall be compelled to pay water rates oftener than once in one year nor to a greater amount, whatever its tonnage may be, than twenty dollars.

**23**. In consideration of the payments of such rates, the vessels paying the same shall be entitled to receive from the hose of the Company, at any wharf, within reach from the hydrant, at which such vessel may lie, a full supply of water upon each occasion of such payment without further charge, and the master shall also be at liberty upon all other occasions to take water from any of the public fountains in the said port.

**24**. There shall be raised, levied, collected and paid upon all coals imported into the port of Placentia, a duty of twenty-five cents per ton, the proceeds of which duty shall be appropriated by the Governor in Council to the purposes of the said Company: Provided that such duty shall be levied on no greater quantity than four hundred tons of coal imported annually into Placentia by any person or corporation for the purposes of railway operation.

**25**. It shall be lawful for the said Company, subject to the direction of the Governor in Council, to open and construct throughout the town of Placentia, and the several places and streets thereof, such and so many drains and sewers as may be necessary for the efficient drainage and sewerage thereof.

**26**. The said Water Company shall be empowered to compel all proprietors of houses and buildings in the said town of Placentia to make and construct one or more sufficient covered drains or sewers of imperishable materials, and of not less than eight inches diameter, leading from such houses and buildings or from the yard (if any) belonging to the same, to and into some public drain or sewer within the said town, or to and into some place of deposit to be approved of by the directors of the said Water Company.

**27**. Should any person or persons, being proprietor or proprietors of houses and buildings aforesaid, refuse to make and construct such covered drains communicating with the sewers, as aforesaid, it shall be lawful for the said Placentia Water Company, their servants or contractors, after ten days' notice in writing to such party, to enter into and upon said houses and buildings or yards, as the case may be, and thereto make and construct one or more sufficient covered drains or sewers leading to the main drains or sewers, as aforesaid; and the cost and expenses of such drains connecting with the said main drains or sewers shall be paid by the said parties, who shall be liable for the same as provided for by this Act, and that the payment for the construction of the said drains or sewers in the twenty-sixth and twenty-seventh sections shall be made and contributed for in the following proportions, namely: Parties who have built on land or are assignees, where there is a term of under seven years to run, the whole to be paid by the landlord; when the term is from seven to fourteen, one-third to be paid by the lessee or assignee and two-thirds by the landlord; when from fourteen to twenty-one years, two-thirds by the lessee or assignee, and one-third by the landlord; and where the person is the freehold owner, the whole value by such owner.

**28.** The cost and expenses of such drains connecting with the main sewers, aforesaid, when made or constructed by the said Placentia Water Company, shall be recoverable by an action or actions to be brought, tried and determined, in a summary manner, in the name of the said Placentia Water Company, before the stipendiary Magistrate for Placentia, and shall with costs to be levied upon the party so in default by warrant of distress or attachment, be applied to the cost and expenses of such connecting drains as are before mentioned.

**29.** Any proprietor or proprietors of any such house, building or yard aforesaid, who shall himself make and construct any such drain or sewer, aforesaid, shall, before proceeding with the same, give two days' notice to the said Placentia Water Company of his intention in that behalf, and such construction shall be subject to the supervision and control of the said Placentia Water Company, in order that it may be effectual for the purpose for which it is designed, and may not in any way damage or interfere with the construction or flow of main drains.

**30.** When any person shall make default in the payment of any rate or assessment payable by virtue of this Act, and such person shall reside beyond ten miles of the town of Placentia or be absent from the colony, and shall not have any known agent in the said district, or in the absence of such person from this colony he shall have no known agent therein, notice of such indebtedness shall be posted on the door of the Court House at Placentia and served upon the person in possession of the premises for which the rate is payable; or if no person be in possession, affixed upon some part of the said premises, and such affixing of notice or service shall be deemed good service, and judgment may be entered by default against the person liable for such rate or assessment as if such person had been personally served with a summons, provided the stipendiary Magistrate shall so order.

**31.** The directors of the said Company, and every person authorized by them for that purpose, shall have free access between the hours of eleven in the morning and four in afternoon, to all parts of every building in which water from the pipes of the said company is delivered and consumed.

**32.** The directors of the said Company may, from time to time, with the approval of the Governor in Council, make such regulations as shall be necessary or expedient for the purpose of preventing the waste or misuse of water, and therein, amongst other things to prescribe the size, description, strength and location of the pipes, cocks, cisterns and other apparatus to be used, which regulations shall be published in the *Royal Gazette* and one other newspaper for one month previous to coming into operation.

**33.** Every cistern or other receptacle for water, and every closet, soil-pan and bath which shall be supplied with water by the company,

shall be so constructed and used as effectually to prevent the waste, misuse or undue consumption of water and the flow and return of foul air or other noisome or impure matter into the mains or pipes of the Company or into any pipes connected or communicating therewith; and the Company shall not be bound to supply water into any cistern or other receptacle or water-closet, soil-pan or bath, which shall not be so constructed.

**34.** If any person shall wilfully or maliciously hinder or interrupt, or cause or procure to be hindered or interrupted, the said directors, their managers, contractors, agents or servants, or any person acting under the authority of the said Company, in the exercise of any of the powers in this Act authorized or contained, or in any of the regulations to be made as aforesaid, or shall do any act in violation of this Act or the said regulations, such person shall, on conviction thereof, forfeit and pay for every such offence a sum not exceeding forty dollars, to be recovered in the name of the said Company in a summary manner before a stipendiary Magistrate, and to be applied to the purposes of the Company.

**35.** If any person supplied with water by the said Company wrongfully does, or causes or permits to be done, anything in contravention of any of the provisions of the last two preceding sections, or of the regulations aforesaid, or wrongfully fails to do anything which under either of the said last two preceding sections or the said regulations ought to be done for the prevention of waste, misuse, undue consumption or contamination of the water of the said Company, the said Company may, without prejudice to any remedy against him in respect thereof, cut off any of the pipes by or through which water is supplied by the said Company to him or for his use, and may cease to supply him with water so long as the cause of injury remains or is not remedied.

**36.** Occupiers of houses or tenements of less annual value than twenty-five dollars a year, shall be exempt from the payment of water rates.

**37.** It shall be lawful for the Governor in Council, at any time he may deem it expedient, to annul and cancel the offices of the directors appointed by the said Company, or the parties named in the first section of this Act acting as directors, and thenceforth to assume the direction and management and to direct and manage the affairs and business of the said Placentia Water Company, and fix and establish rates and assessment and all matters incidental thereto, in as full and ample a manner as might have been exercised by the same directors; and further, it shall be lawful for the Governor in Council to abolish all or any of the offices which may be in connection with the said Company, and to make such appointments and at such salaries as he may consider expedient for the efficient management of the affairs of the said Company.

**38.** In the event of the Governor in Council, in pursuance of the power vested in him by the preceding section of this Act, cancelling and

annulling the offices of the said directors, the power vested in the shareholders to choose directors shall thenceforth cease and determine.

**39**. It shall be lawful for the Governor in Council at any time to nominate and appoint a person or persons in substitution for the said directors whose offices may be cancelled or annulled The person or persons who may be appointed in pursuance of this section shall have and exercise all the power and authority by this Act vested in the said directors.

**40**. The appointments made in pursuance of the three next preceding sections of this Act shall be published in the *Royal Gazette* and laid before the Legislature at its then next sitting.

**41**. The Company, their officers and servants, shall have the right to enter upon any Crown lands or lands of any corporation or person whatsoever, and into all houses, tenements and erections thereon, whenever it may become necessary for the purposes of this Act, and to break up, dig and open so much and so many of the public streets or thoroughfares, or private property, or other places as may be necessary for the laying of water pipes and sewers, and to pass and repass into, over and upon such streets, thoroughfares, lanes, tenements, buildings and erections, and to convey material over and through and upon the same, and to make, construct and lay down pipes, gratings or other necessary works in and upon the same, and from time to time to remove, alter and change the same.

**42**. All pipes, hydrants, hose, engines and other materials necessary for the construction and maintenance of the works of the said Company, shall be admitted into this colony duty free.

# 44 VIC., CAP. 2.

## An Act respecting the Newfoundland Railway.

[Passed 7th May, 1881.]


Section

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Appointment of Joint Committee of Legislature.
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2.—Construction: Subject to approval; Arbitration.
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14.—Covenants by Government; subsidy—$180,000 per annum for thirty-five years, to accrue on completion of five mile sections.
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20.—Immigration; aliens; incorporation.
21.—Grants of roadway, stations, &c.; private property—compensation for; $90,000 to be reserved; provision for deviation from line of Kinipple and Morris; location in St. John's.
22.—Security by bonds—$100,000.
23.—Laborers paid monthly; deposit for such payments.
24.—Meaning of term "continuously operate."
25.—Pre-emption; notice; arbitration; appraisement; railway to vest in Government.
26.—Contract subject to ratification by Legislature.

Section

*Schedule:*

1.—Charter—Wm. Bond and others constituted a body corporate, styled "The Newfoundland Railway Co."
2.—Powers and privileges.
3.—Election of officers; internal regulations.
4.—Board of directors; election of; duties.
5.—Unpaid stock; liability of holders.
6.—Limitation of rights unexpressed.
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8.—Quorum of directors.
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10.—Company may borrow money.
11.—Right of entry upon lands, public or private; compensation for damage; arbitrators.
12.—Right to establish and conduct express companies; express companies, "common carriers."
13.—Passenger fares; powers in respect of.
14.—Baggage.
15.—Freight payable in advance; detention and sale of goods; rights of company in event of proceeds insufficient to satisfy claim.
16.—Storage.
17.—Freight charges.
18.—Interference with ordinary travel to be avoided; railway crossings.
19.—Alarm whistle, &c
20.—Directors to fix times for trains; liability of company to private parties.
21.—Freighted cars from other lines; transportation of.
22.—Connections of different lines.
23.—Organization and election of officers, &c.
24.—Capital stock of company.
25.—Increase of capital.
26.—Extension of main line.
27.—Stock—personal property.
28.—Subscribers' liability.
29.—Limitation of liability.
30.—Payment of subscriptions.
31.—Amendment of bye-laws.
32.—Principal office—New York or London.
33.—Superintendent's office—St. John's; service of process.

II.—Enactment of schedule to contract.
III.—Avoidance of contract and incorporation in event of work not begun within three months.
IV.—Construction af 21st clause of contract.
V.—Right of way, &c,; mode of compensation where otherwise unprovided; indemnity by exchange of lands; proviso.
VI,—Public Act.

Whereas by an Act passed in the forty-third year of Her Majesty's reign, entitled "An Act to authorize the raising by loan of a sum of money for the construction of a railway, and for other purposes connected therewith," provision was made for raising by loan a sum of money for the purposes of the said Act.

And whereas, by resolution of the Honourable the Legislative Council and House of Assembly, passed in the forty-fourth year of Her Majesty's reign, it was resolved that it was more desirable, if a suitable proposal be obtained, that the Government should contract with a company for the constructing, maintaining, and operating the said railway by the company, in consideration of the payment to the company of an annual subsidy, and the concessions of land, with other privileges, in substitution of the provisions of the said Act:

And whereas, it was further resolved, that a proposal made by the parties hereinafter named and incorporated presented a favorable basis for a contract for constructing, maintaining, and operating a railway from St. John's to Hall's Bay, with branches to Clarke's Beach or Brigus, and to Harbour Grace, a distance approximately of three hundred and forty miles.

And whereas, it was further resolved, that a joint select committee of the Honourable Legislative Council and the House of Assembly, should be appointed, to negotiate a contract, to be ratified by the legislature:

And whereas in pursuance of the said resolutions the following committee was appointed:—

From the Legislative Council:—Hon'bles Peter G. Tessier, Charles R. Ayre, and Augustus W. Harvey;

From the House of Assembly:—Honourables Sir W. V. Whiteway, Ambrose Shea, and John Rorke; and Joseph I. Little, Alexander M. Mackay, and Robert J. Kent, Esquires.

And whereas, in pursuance of the powers conferred on them, the said committee have so negotiated a contract on behalf of the Government of Newfoundland with the parties hereinafter named and incorporated, which contract, with the schedule annexed, has been laid before the legislature for its approval, and it is expedient to approve and ratify the said contract and make provision for the carrying out of the same:

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

1. The said contract is hereby approved, ratified and confirmed, and the Governor in Council is hereby authorized to perform and carry out the terms and conditions thereof, as follows:—

Articles of Agreement made between the Honourables Peter G. Tessier, Augustus W. Harvey, Charles R. Ayre, Sir William V. Whiteway, K. C. M. G., Ambrose Shea, and John Rorke; Joseph I. Little,

Alexander M. MacKay, and Robert J. Kent, Esquires, acting on behalf of the Government of Newfoundland, of the one part, and William Bond, Frank W. Allin, C. X. Hobbs, Domingo Vasquez, and Albert L. Blackman, members of a syndicate organized to construct the Newfoundland Railway, hereinafter called the "Syndicate Company," of the second part.

Whereas, by an Act passed in the forty-third year of Her Majesty's reign, entitled "An Act to authorize the raising by loan of a sum of money for the construction of a railway, and for other purposes connected therewith," provision was made for raising by loan a sum of five million dollars for the construction of a railway from St. John's to Notre Dame Bay, with branch lines, as in said Act set forth. And whereas a survey has been made of about one hundred miles of the said railway, together with an estimate of the cost thereof. And whereas it has been deemed more desirable that the said railway should be constructed, operated and owned by a company, aided by a certain annual cash subsidy for a limited number of years, and the grant, in fee simple, of lands to the company, with certain other advantages and privileges hereinafter set forth.

And whereas, such mode of construction and operation having been made known, together with the advantages which would result from the construction and operation of such railway; and whereas, by resolutions passed by both branches of the legislature, the said parties hereto of the first part were appointed a joint committee to negotiate with the parties of the second part, upon the basis of certain proposals theretofore made. And whereas negotiations have taken place between the said parties of the first and second parts, and the following terms, conditions, and covenants, have been agreed upon:

Now, therefore, these presents witness that for and in consideration of the premises, and of the annual cash subsidy, grants of lands in fee simple, covenants, and promises hereinafter contained on the part of the Government to be paid, made, done, and performed, the Syndicate Company hereby covenant and agree, as follows:—

Location.

1. To locate, construct, equip, maintain, and continuously operate in an efficient and safe condition, as their sole property, three hundred and forty miles of railway in the island of Newfoundland. Such line of railway shall commence at St. John's and run thence through the peninsula of Avalon on or near the line indicated by the survey of Kinipple and Morris, made in the year one thousand eight hundred and eighty, and from the end of said survey near Spread Eagle Peak to Hall's Bay by the best and most desirable line, connecting with South West Arm or Random Sound, with Clode Sound, and crossing Exploits river near Bishop's Falls. From the said main line there shall be two branch lines; the first being the Clark's Beach or Brigus branch, leaving the main line near the Hodge Waters, and running to Clarke's Beach or Brigus by the best and most desirable line; the second branch, or Harbour Grace line, leaving

the main line in the vicinity of Spread Eagle Peak, and running thence to Harbour Grace by the best and most desirable route, a distance of about twenty-six miles The Government being desirous of extending the line to Carbonear, it is understood that the branch line from Spread Eagle Peak to Harbour Grace shall, if expedient, be altered as convenient to connect Harbour Grace and Carbonear with the main line; or the Clarke's Beach or Brigus line may be extended to Harbour Grace and Carbonear upon such terms as may hereafter be agreed upon by the Government and the said Syndicate Company.

The said Syndicate Company shall locate and provide all stations, station houses, flag stations, depots, water stations, sidings, repair shops, and turn-tables, and all other essentials necessary to the efficient operation of the road at such places, villages and towns situated along or near the lines of railway as will best accommodate the public and the shipping interests of the country, and shall determine the gradients and curvatures of the said lines of railway.

### Construction.

2. The line of railway, with the branches hereby provided to be constructed, shall be a substantial, reliable and efficient railway, subject to approval, when completed in sections, of an engineer appointed by the said Government; but should any difference arise as regards the report of the Government Engineer, or as to the substantiality, reliability or efficiency of the road, such dispute shall be decided by arbitrators to be appointed, one by the Government, one by the said Syndicate Company, and a third arbitrator by these two so named. It being understood by this and the subsequent sections that the railway intended to be constructed shall not be what is deemed in England and the United States a first-class railway. Should the railway upon inspeetion prove to be not substantial, reliable and efficient, then said Syndicate Company shall, without unnecessary delay, make the same substantial, reliable and efficient.

3 The guage of the said lines of railway shall be three feet six inches.

4. The rails shall be best steel rails of approved T section, of not less than thirty-five pounds per running yard, and to be well secured to cross ties by being properly spiked down, the joints to be properly fishbarred, the fish-plates to be well secured by bolts and nuts, the whole to be substantially performed.

### Cross Ties.

5. The cross ties may be of juniper, black spruce, pine, American oak, or other sound timber, to be flattened on two sides, of uniform thickness of not less than seven inches, the flattened surfaces to be not less than seven inches face, the ends to be cut square, the number of ties to the mile not to be less than two thousand one hundred and thirteen, nor

wider apart than two feet six inches from centre to centre, and at joints two feet apart from centre to centre.

### Bridging and Trestling.

6. The bridging and trestling to be of wood or iron, as may be deemed by the engineer of the company most suitable, according to the requirements and description of locality where needed, to be of full strength and substantially built, with solid foundations.

### Masonry and Culverts.

7. Bridge piers and abutments may be of stone, concrete or iron, all to be substantially built; culverts to be of concrete, stone or iron, of ample size to drain the waters freely from the track.

### Ballast.

8. The ballast to be of suitable material most convenient to the locality, the cross ties to be well bedded and set, to be properly "tamped up." The alignment and curvature to be determined by the engineer of the company, and the elevation of rails on curvatures to be according to the curves to secure the greatest safety. The road, bed and way to be well and properly drained by side ditches, drains and culverts.

### Stock Gaps.

9. Stock gaps shall be made by the Syndicate Company where the line of railway passes through enclosed private property. Such stock gaps shall be made where the line of railway crosses the line of enclosure; or in lieu of the stock gaps, the Syndicate Company may build fences on each side of their railway, to prevent any straying stock from going on the said Syndicate Company's railway; but in all localities where the line passes through unenclosed land, the Syndicate Company shall not be obliged to erect fences, and the Syndicate Company shall not be responsible or liable for damage to any person whose stock may be killed or injured by reason of trespassing on the company's line of railway.

### Rolling Stock.

10. The Syndicate Company shall provide suitable locomotives, of reliable and first-class workmanship, passenger coaches, comfortably and well fitted, freight service, box and flat cars, all to be substantially built, and the same shall be maintained in good working order. When the line is completed and ready for traffic the Company shall have and provide at least six locomotives and six fully equipped trains ready for use, three passenger and three freight trains; the passenger trains to consist of mail and express baggage, and first and second-class passenger cars. The Syndicate Company shall further furnish additional rolling stock, trains and equipments, and accommodations as fast as, and in such quantities as the developing and increasing business of the line may require, so that the

travel and shipping interests of the country may be fully accommodated. The Syndicate Company shall provide such necessary snow ploughs and other appurtenances as the engineer of the Company may deem necessary to keep the track unobstructed and open for traffic, and shall make equally strenuous efforts as are ordinarily used by railway companies to keep the line open and unobstructed.

Operating.

11. The Syndicate Company shall efficiently and continuously operate the lines of railway according to the regular time-table, except they shall be prevented by causes over which they have no control. The Syndicate Company shall furnish a regular time-table showing the time of arrival and departure of trains from each station, said time-table to show at least one passenger train each way each day (Sunday excepted) over the whole line; but as many more trains may be added daily as the demands of the Company's business may require. The regular time of passenger trains shall not be less than fifteen nor more than forty miles per hour. Mixed and freight trains can be run at less speed.

Mails.

12. The Syndicate Company to provide the Government with all necessary facilities for transporting the Government mails, when required, over the said lines and branch lines of railway, in such quantities and tonnage as the Government may require; the Syndicate Company to prepare and fit up mail cars or sectional combination cars to carry the mails; the Government mail agents to have exclusive use of and possession of such car or section set apart for carrying the mails; the said Syndicate Company to attach one of such postal or mail cars to each through daily passenger train each way, and shall transport the mails to each station along the line and branch lines of railway, and upon arrival the mail agent of the Government may receive and deliver the mails. The mail agents shall have exclusive control of the mail service, the Company only undertaking to furnish said cars and transport the mails and mail agents over the line according to the Company's regular time-table. The mail agents shall not interfere with or delay the trains in any way in receiving or delivering the mails. The said postal or mail cars shall only be used for the purposes of the Government mails, and as to the amount to be paid by the Government for such services and the arrangements to be made respecting the mails, the terms shall be equitable and fair, and based upon mail arrangements in Great Britain, the United States and the Dominion, under a similar condition of surrounding circumstances.

13. The said railway and branch lines shall be completed and in operation within five years from the date of this contract. In consideration of the premises, and of the due and faithful performance by the said Syndicate company of all and singular the covenants and agreements herein contained on their part to be performed, the Government of Newfoundland covenants and agrees:—

14. To pay the Syndicate Company, upon the construction and continuous efficient operation of the line, a subsidy of one hundred and eighty thousand dollars per annum, in half yearly payments in gold, in London, England, on the first day of January and the first day of July in each year, for a period of thirty-five years; such annual subsidy to attach in proportionate parts and form part of the assets of the said Company, as and when each five mile section is completed and operated, or fraction thereof, at terminus at Hall's Bay.

GRANTS OF LAND.

15. The Government to grant in fee-simple to Syndicate Company five thousand acres of land for each one mile of railway completed throughout the entire length of three hundred and forty miles. The said fee-simple grant of five thousand acres of land per mile to be made to said Syndicate Company upon completion of each section of five miles of railway or fraction thereof at the terminus at Hall's Bay.

The sections or blocks to be located and laid off upon meridians or upon base lines, to be run as may be found practicable, pursuing as near as possible the general direction of the said lines of railway.

The land to be located on each side of the railway in alternate sections, one mile in length with the railway, on meridian or base lines, as the case may be, and eight miles in depth, the Government retaining the alternate sections.

Where such sections from any cause are not obtainable along the line the said Syndicate Company may select Crown lands elsewhere to make up the deficiencies; but the Syndicate Company shall not be compelled to accept barren or swamp lands along the line of railway, but may select from Crown lands elsewhere.

16. Provided that nothing in this contract contained shall preclude the Governor in Council from exercising the right to make such reservations relative to Crown lands as he may deem necessary to provide for the construction of roads and bridges, court houses, market places, churches, chapels or other places of public worship, school-houses, bogs for supply of manure or fuel to the public, forests for the use of the fisheries, or for any other public use or purpose whatsoever.

17. Upon the completion of each five mile section of railway, as hereinbefore mentioned, the Syndicate Company shall, within two years thereafter, select the alternate blocks on each side of the railway to which they will be then entitled, and until such selection be made the Government shall not dispose of any Crown lands, timber, or mineral rights within eight miles on either side of the line of railway; and further, the company shall, within three years from the completion of the railway, select such lands as may be required to make, together with the blocks situate along the line, the full quantity of five thousand acres to each mile of railway,

the last mentioned selections to be made in blocks of not more than eight or less than one square mile each, it being understood that the company shall not hold more than three of the last mentioned selections adjoining each other, and that the Government may reserve one intermediate selection for every three the company may make.

18. All articles to be used in the construction and maintenance of the said railway, the rolling stock, and telegraph and telephone lines, to be admitted free of duty.

The articles are as follows:—All railway iron and steel rails, fish-bars, chains, spikes, nuts and bolts, frogs, crossings, switches, switch-fixtures, turn-tables and fixtures, iron and steel of every description used in construction of bridges, pumps and pipes for water and railway stations, iron and hardware used in construction of stations of every description, tools, waggons, carts, implements and machinery for shops and repairs, locomotives and parts, rolling stock of every description, wire, instruments and fixtures and supplies for telegraph and telephone lines, dynamo machines and fixtures for electric lights, railway reflectors, lamps and lanterns, and such other articles as are actually to be used in the construction of and fittings of the railway and rolling stock and stations, and also surveyors' instruments, also forage for animals employed in constructing and maintaining said line of railway. But no goods, wares or merchandize of any description shall be admitted free of duty that shall be intended for sale or for doing any work other than that respecting the said railway, telegraph and telephone lines, or that is not actually employed in constructing and maintaining said railway, rolling stock, telegraph and telephone lines, as above named.

19. The railroad and lands of the Company, and also its capital stock, shall be exempt from exceptional taxation.

20. The Government undertake that the necessary statutes shall be enacted to encourage immigration, to enable aliens as well as British subjects to hold lands in fee simple, and to incorporate this Syndicate Company, which Incorporation Act shall contain the provisions necessary to carrying this contract into effect as contained in schedule A., hereto annexed, and forming part hereof.

General Clauses.

21. The Government shall grant, free of charge, to the Syndicate Company, land for the roadway to the extent of one hundred feet on each side from the centre of the track, and also all lands necessary for stations, depots, work shops, yards, sidings, turnouts, and other purposes requisite for the operation of the road where the line runs through Crown lands; and where the line runs through private property, then all lands necessary for the said railway, and for such purposes as aforesaid, shall be provided by the Government, by whom the owners thereof shall be compensated. And towards recouping the Government for such outlay, for the purposes

of such compensation, the Government shall retain ninety thousand dollars out of the last annual subsidy, if the land so purchased shall cost so much. If the lands so purchased shall cost less than ninety thousand dollars, the amount shall be reduced accordingly; and if the amount so expended should exceed the said sum of ninety thousand dollars, then, and in such case, any further expenditure shall be borne by the said Syndicate Company, and forthwith repaid to the Government; provided also, that in case the line of railway, as surveyed by Messrs. Kinipple and Morris in the year one thousand eight hundred and eighty, shall be altered as regards the location, stations, depots, or otherwise, so that the cost of land necessary to be purchased from private parties for the purposes aforesaid shall be increased or diminished, then the amount to be deducted out of the last year's subsidy, as aforesaid, shall be increased or diminished accordingly: Provided also that the line of railway shall not be located in the town of St. John's between Cochrane street on the East and a line from Radford's property northerly to Le Marchant road on the West, and between the harbor on the South and Le Marchant road and Military road on the North.

22. The said Syndicate Company, within three months after the execution of this contract, shall deposit with the Government of Newfoundland, as security for the performance of this contract, bonds of the United States of America, or other approved securities, in amount equal to one hundred thousand dollars, the same to be returned to the said Syndicate Company upon completion of the three hundred and forty miles of railway; the interest in the meantime shall be paid to said Syndicate Company.

23. All laborers engaged in the construction of the railway and works of the Company shall be paid their wages monthly; and from time to time there shall be deposited in advance, in a bank in this island, a sum of money, which shall be agreed upon between the parties hereto, sufficient to pay one month's wages of such laborers, and the said sum shall be placed to a distinct account and shall be applied to such purposes only.

24. Where the words "continuously operate" are used it is understood and agreed that it shall mean and be construed that the Company shall operate the railway upon their regular time-table, except when prevented by causes over which the Syndicate Company have no control; and failing to operate by the causes above named will in no way operate as a forfeiture of the rights and privileges or the payment of the cash subsidy or subsidies to be granted to or paid to said Syndicate Company by the Government of Newfoundland as herein provided for. But it is agreed that the Syndicate Company shall use all due diligence in every respect to continuously operate the roads as provided in their regular time-table.

PRE-EMPTION.

25. At any time after the expiration of thirty-five years from the date hereof the Government shall have the right to purchase the property and rights of the said Syndicate Company in the said lines of railway

and all property belonging to the said Syndicate Company in this island; and in case the Government shall deem it advisable to exercise such right, the Governor in Council may cause a written notice to that effect to be given to the said Syndicate Company by leaving the same at the office of the said Syndicate Company in this island, and thereupon the Governor in Council and the Syndicate Company shall each appoint two arbitrators or appraisers, and the four arbitrators or appraisers so appointed shall appoint a fifth arbitrator or appraiser, and the five arbitrators or appraisers so appointed shall appraise the property and rights of the said Syndicate Company in the said railway and property, and the appraisement of a majority of such arbitrators or appraisers shall be taken to be the true and just value thereof; and after the expiration of one year from the date of such award of appraisement, and after the payment made and tendered in manner hereinafter provided, the said railway and property shall be vested in Her Majesty, subject to all bonded and other indebtedness owned by or held against the Company or its railway property at the time of the said valuation, and the payment or tender aforesaid of the amount of such award of appraisement shall be made to the president or directors, or to the manager or superintendent of the said Syndicate Company of this island.

26 This contract shall not be deemed to be complete until the same shall have been ratified by the Legislature of Newfoundland.

In witness whereof the parties hereto have subscribed their hands at St. John's, Newfoundland, this twentieth day of April, Anno Domini one thousand eight hundred and eighty-one.

(Signed), W. V. WHITEWAY, *Chairman.*
" P. G. TESSIER,
" A. W. HARVEY,
" JOHN RORKE,
" C. R. AYRE,
" A. SHEA,
" J. I. LITTLE,
" ROBERT J. KENT,
" A. M. MACKAY.

(Signed), WM. BOND, By his Attorney, A. L. BLACKMAN.
" FRANK W. ALLIN, " A. L. BLACKMAN.
" C. X. HOBBS, " A. L. BLACKMAN
" DOMINGO VASQUEZ, " A. L. BLACKMAN.
" A. L. BLACKMAN.

Witnesses to the signatures,

(Signed), WILLIAM WHEATLEY,
CHAS. J. Le MESSURIER.

*(Schedule A., referred to in the foregoing Contract.)*

## CHARTER OF INCORPORATION.

1. WILLIAM BOND, F. W. ALLIN, C. X. HOBBS, DOMINGO VASQUEZ and ALBERT L. BLACKMAN, all of New York, and all other persons and corporations as shall become shareholders in the Company hereby incorporated, are hereby constituted a body politic and corporate by the name and style of "THE NEWFOUNDLAND RAILWAY COMPANY," for the purpose of constructing a railway from the city of St. John's to Hall's Bay, Newfoundland, with a branch line or lines to Brigus or Clarke's Beach and Harbour Grace and Carbonear, and to operate the same.

2. And by said name may sue and be sued; may have and use a common seal, which it may alter at pleasure; the signature of the name of the corporation by any duly authorized officer shall be legal and binding; purchase and hold, or receive by gift, in addition to the personal property owned by said corporation, any lands necessary for the transaction of the corporate business, and purchase or accept any lands in payment or part payment of any debt due to the corporation, and sell lands for corporation purposes; establish bye-laws and make all rules and regulations, not inconsistent with the laws of Newfoundland, deemed expedient for the management of corporate affairs, and do all other acts and things necessary for and incident to the efficient and satisfactory operation of the said railroad; and appoint such subordinate officers and agents, in addition to the president, secretary and treasurer, as the business of the corporation may require; designate the name of the office and fix the compensation of the officers.

3. The following provisions and restrictions are coupled with said grant of powers. A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors. The term of all officers may be fixed by the bye-laws of the corporation; the same, however, not to exceed two years. The corporation may make regulations concerning the subscription for or transfer of stock; fix upon the amount of capital to be invested in the enterprise; the divlsion of the same into shares; the time required for payment thereof by subscribers for stock; the amount to be called for at any one time; and in case of failure of any stockholder to pay the amount thus subscribed by him at any time, and in the amount thus called, a right of action shall exist in the corporation to sue said defaulting stockholder for same.

4. The board of directors may consist of five or more members, at the option of the corporation, to be elected either in person or by proxy, by a majority of the votes cast, each share representing one vote; shall keep a full and true record of all their proceedings, and an annual statement of receipts and disbursements shall be copied on the minutes, subject at all times to the inspection of any stockholder; the books of the corporation

shall show the original and subsequent stockholders; their respective interests; the amount which has been paid on the shares subscribed; the transfer of stock, by and to whom made; also other transactions in which it is presumed a stockholder or creditor may have an interest.

5. The amount of any unpaid stock due from a subscriber to the corporation shall be a fund for payment of any debts due from the corporation, nor shall the transfer of stock by any subscriber relieve him from payment unless his transferee has paid up all or any of the balance due on said original subscription.

6. By no implication or construction shall the corporation be deemed to possess any powers except those hereby expressly given or necessarily implied from the nature of the business for which this charter is granted, or engage in any business outside the purpose of this charter.

7. This charter of incorporation may be amended or repealed by statutory enactment upon application by the company. If it is repealed, or the amendments proposed, being not merely auxiliary, but fundamental, are rejected by a vote representing more than one half of the stock, the corporation shall continue to exist for the purpose of winding up its affairs, but not to enter upon any new business. If the amendments or modifications being fundamental are accepted by the corporation, as aforesaid, in a general meeting to be called for that purpose, any minor, married woman, or other person under disabilities, or any stockholder not agreeing to the acceptance of the modification, shall cease to be a stockholder, and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock, if it is worth so much; if not, then so much as may be its real value in the market on the day of the withdrawal of said stockholders, as aforesaid; provided the claims of all creditors are to be paid in preference to said withdrawing stockholders.

8. A majority of the board of directors shall constitute a quorum, and shall fill all vacancies until the next election. The first board of directors shall consist of five corporators herein named.

9. The corporation shall have existence for ninety-nine years.

10. This Corporation shall have the right to borrow money and issue notes or bonds upon the faith of the Corporate property, and also to execute a mortgage or mortgages as further security for repayment of money thus borrowed.

11. This Corporation shall have the right to enter upon and take the lands of individuals, or public lands, as provided for the purposes of the railway mentioned in the contract to which this is a schedule, and also to enter upon the lands of individuals, or public lands, not exceeding two hundred feet in width for the entire length of extension, connecting or branch lines which this Company may construct in addition to the said railway mentioned in the contract, and may build thereon the said extensions, connecting or branch lines of railway, its stations, houses, sidings

and other erections necessary for the operations of the same, and said land for right of way and stations so taken shall, in fee simple, belong to said corporation. The Company, by its officers and agents, may enter upon the lands of private persons, as also public lands, for the purpose of making surveys, location and estimates for their lines of railway, and may take from public lands stone, earth, or timber, or other necessary material for the construction of the Company's railways, and may take, use, or employ such water courses as may be necessary to supply water for the purposes of the Railway Company. For the purpose of ascertaining the damage that may be occasioned to any such person whose interests in any lands and tenements may be in any way affected under this section other than the private lands for the railway mentioned in the contract, the Company shall appoint one arbitrator and the party interested another, and the Supreme Court of this island, or a Judge thereof, a third arbitrator, to determine the amount of compensation to be paid to such person, and the award of any two of them shall be final and binding; and in case such person shall neglect or refuse to appoint an arbitrator within ten days after notice in writing so to do from the said two arbitrators, the said Court or Judge may appoint an arbitrator for such party, and the award of any two of them shall be final and binding; and the said arbitrators shall be sworn before a stipendiary Magistrate to do justice between the parties, and may summon and require the attendance before them of all parties interested in the property to be appraised, or in the damages to be ascertained by them, the agents of such parties respectively, and also all necessary witnesses, and require the production of all deeds and papers requisite in the reference to establish title or interest of any such party claiming such compensation aforesaid, and may examine upon oath, to be administered by any one of the arbitrators, all such parties or their agents and all witnesses touching the matters to be enquired into by such arbitrators; in estimating any such alleged damage the arbitrators shall take into account any additional value or advantage which may accrue to the several proprietors and occupants by reason of the construction of such railroad.

12. "The Newfoundland Railway Company" have the right to establish a parcel or package express, and carry on the said business and conduct the same in like manner under like regulations as other express companies in the United States of America. To facilitate the delivery of the express goods or packages the same shall be carried on the regular passenger trains of the Company; such express company shall be responsible as other express companies as "common carriers" for all goods entrusted to their care for transportation.

13. The Company shall have the right to demand and collect the regular fare from any person before such person shall be allowed to enter the train, and the Company, through its agents and employees, may refuse to allow such person to enter the train until such person has paid the regular fare or exhibited the regular ticket which the Company may require; it shall be unlawful for any person to ride on said Company's cars

without first paying the regular fare, except by written permission of the manager or other duly authorized officer of the Company, and except the mail agents of the Government and employees of the Railway Company. Any person who shall be found riding on the Company's cars other than those who are duly authorized, without first paying the regular fare, may be expelled from the cars.

14 Each first-class passenger shall be allowed to carry baggage to the extent of eighty pounds in weight, and each second-class passenger fifty pounds; and all baggage in excess of the above weights shipped by a single person shall be charged for at express baggage rates by the Company.

15. The Company shall have the right to demand and collect from the consignor all freight charges before the goods, articles or packages are shipped; the Company, through its agents and employees, may refuse to receive such goods until the freight charges are paid; should the Company ship such goods, articles or packages of any description to the point of destination, then the Company may demand and collect such freight charges, as well as all other advances or other charges, before the same shall be removed from the possession of the Company; should the consignee refuse to pay said freight charges upon demand, then the Company, after the expiration of thirty days, shall have the right to advertise such wares, goods, merchandize, articles and packages "for sale"; the said advertisement being for two weeks in a newspaper published in Saint John's, and such advertisement shall give the date and time of sale, the names of the consignor and consignee, with the number of the package and charges thereon, as named in the bill of lading; then, should the consignee fail to pay such charges in the time specified before the day of sale, the corporation may sell at public auction all such goods, wares, merchandize, articles, and packages, and apply the proceeds to the payment of such freight and other charges; and pay the balance or surplus (if any) to the consignors; should the sum received for such articles so sold fail to realize the amount of all charges against the said goods shipped, then the Company may have a cause of action and may recover the amount of the difference of such sum received at such sale, and the charges against such shipment, from the consignor.

16. The Railway Company shall, after due notice to the consignee, have the right to demand and collect a storage price of twenty-five cents per ton on all heavy articles, goods, merchandize and wares, and ten cents per cubic foot for all articles of bulk, and ten cents for each package or article left or remaining in possession of the Company longer than five days, (all charges to be for a time not less than thirty days); should the goods, articles or merchandize be left in possession of the Company longer than thirty days, from the expiration of the first five days, then the Company may demand, charge and collect the above rate of storage for each month, or fraction thereof, that the goods remain in the Company's possession; on car-load shipments of heavy freights, such as merchandize, machinery, iron, ores of all classes, timber, lumber, boards, coal, stone, the

consignee shall be required, at Consignee's risk and expense, to unload and remove the same within twenty-four hours (Sundays excepted) after the delivery in cars, or arrival of said cars at destination or terminal station, as per bill of lading; said consignee failing so to do shall be charged for the use of such freight car at the rate of five dollars per day for each day or fraction thereof in excess of twenty-four hours, and the Railway Company may collect the same from (of) the said consignee before the goods, wares, or merchandize shall be removed. All heavy machinery, wares, merchandize, timber, lumber, stone, ores, iron, and other heavy articles, shall be removed from the cars by the consignee, at consignee's risk and expense; when a shipment, less than a car-load, is made, the Company may unload the said heavy freights and discharge the car, but the Company may charge an additional "labour charge" for such services, which may be collected as other freight charges. All freight charges shall be a prior or first lien on such goods or articles shipped over the Company's line of railway, and shall be precedent to any other attachment lien or obligation whatsoever.

17. The charge for transportation of freight shall not exceed (30) thirty cents per hundred pounds on heavy articles, and twenty cents per cubic foot on articles of measurement, for every one hundred miles transported; and five cents per mile for first-class passengers, and three cents per mile for second-class passengers. Clergymen will be charged half first-class fare. Special contracts may be made with shippers on their roads in regard to rate of freight, so as not to exceed the amount herein designated.

18. The line of track of road shall be so constructed as not to interfere with convenient travel of the public highways, and roads and streets of cities, towns or villages, and so as to allow carts, waggons, carriages, and other vehicles, conveniently and safely to pass over or under the line of track. Boards, well supported by posts, or otherwise, shall be placed and constantly kept across each public road, when the same is crossed upon the same level with the track of railroad, the board elevated so as not to obstruct the travel, and on each side of the board there shall be printed in large letters, easily seen by the traveller, the words "RAILROAD CROSSING; LOOK OUT FOR THE CARS." Such board need not be put at the crossing of streets or alleys, in cities, towns and villages

19. The whistle shall be blown, or the bell sounded, at not less distance than two hundred feet from the crossing of every road.

20. The board of directors shall fix regular times for running of trains, for the transportation, and shall take, transport, and discharge such passengers and property at, from, and to such places on the due payment of freight tolls and fares legally authorized to be charged therefor; and in case of the refusal of said Company, their officers or agents, to take and deliver the same or either of them at the regular appointed time, such Company shall pay to the party aggrieved all damages thereby suffered.

21. This Company shall receive on their road full freighted cars from other roads, and transport them, without break of bulk, to the place of destination, charging for goods, wares, and merchandize in their own cars, and return the said cars free of charge, provided the cars thus to be received are good and substantial, and also provided the distance said wares and merchandize are to be transported is not less than twenty miles.

22. This Company and any other companies hereafter owning lines of railway in this island may exercise mutual rights as respects connecting their lines of road, constructing and using sidings, turnouts, and connecting tracks, and may enter upon the property of each other for the construction of connecting lines or crossing their respective lines above, below or on the same level, and may use such sidings as joint sidings for the purpose of transferring cars from one line to another, and may construct and use joint stations, and do any other act necessary for the better accommodation of the public and for purposes of traffic, upon such terms as are equitable between such companies.

23. Immediately after the passing of this Act the five or more persons named as the board of directors shall meet and duly organize, elect their president and vice-president, the secretary and treasurer, and shall appoint such officers and agents as by the said board of directors may be deemed necessary to properly conduct and carry on the business of the corporation.

24. The board of directors may fix the amount of capital stock of the Company, and the number of shares into which the same may be divided; and under their direction subscription books may be opened to obtain stock, all other persons having an equal right with the original corporators to subscribe for stock until the full amount of said capital stock is subscribed.

25. The board of directors may at any time increase the capital stock, if the necessities of the corporation in their estimation may require said increase.

26. This corporation shall have the right to extend the main line and to construct such branch line or lines as the board of directors may deem to the best interests of the corporation.

27. The capital stock of this corporation shall be impressed with the character of personal property.

28. Each subscriber shall be liable only for any balance remaining unpaid on the amount and number of shares subscribed for.

29. By no construction or implication shall any shareholder be bound each for another, the express feature of said stock being to limit the liability of such subscriber to the amount of his subscription.

30. The board of directors may receive in payment of subscription to stock, money, lands, material, or work at contract price, as in their judgment they may elect and agree upon with such subscribers to the stock of the Company.

31. The bye-laws of this corporation may be amended.

32. The board of directors may have their principal office in New York or London, as they may elect. It shall not be necessary for any member of the said board of directors to be a resident of Newfoundland.

33. The office of superintendent or manager of this Company shall be located in St. John's; and if any cause of action shall arise within this colony against the Company, and any writ or process be issued against the Company, service of such writ or process, and of all papers and documents, may be validly made upon the Company at such office.

St. John's, Newfoundland, Twentieth day of April, 1881.

| | |
|---|---|
| (Signed), | W. V. WHITEWAY, *Chairman.* |
| " | P. G. TESSIER, |
| " | A. W. HARVEY, |
| " | JOHN RORKE, |
| " | C. R. AYRE, |
| " | A. SHEA, |
| " | J. I. LITTLE, |
| " | ROBERT J. KENT, |
| " | A. M. MACKAY. |

| | | | |
|---|---|---|---|
| (Signed), | WM. BOND, | By his Attorney, | A. L. BLACKMAN. |
| " | FRANK W. ALLIN, | " | A. L. BLACKMAN. |
| " | C. X. HOBBS, | " | A. L. BLACKMAN. |
| " | DOMINGO VASQUEZ, | " | A. L. BLACKMAN. |
| " | A. L. BLACKMAN. | | |

Witnesses to the signatures,

(Signed), WILLIAM WHEATLEY,
CHAS. J. Le MESSURIER.

II. For the purpose of incorporating the said WILLIAM BOND, FRANK W. ALLIN, C. X. HOBBS, DOMINGO VASQUEZ and ALBERT L. BLACKMAN, and those who shall be associated with them in the undertaking, under the name of "The Newfoundland Railway Company," and of granting to them the powers necessary to enable them to carry out the said contract according to the terms thereof, and conferring upon them the franchises, privileges and powers embodied in the schedule to the said contract appended, the said schedule shall have force and effect as if it were an Act of the

Legislature of Newfoundland, and shall be and be held to be an Act of Incorporation within the meaning of the said contract.

III. In the event of the work to be done under the said contract not having been commenced within a period of three months after the passing of this Act, then the Governor in Council may declare the said contract and charter of incorporation null and void.

IV. To remove doubts as to the true construction of the twenty-first clause of the said contract, so far as the same relates to the amount of purchase money for right of way for said Company, which is to be retained by the Government of Newfoundland out of the last annual subsidy, it is hereby declared that the amount to remain over and be retained out of such last annual subsidy shall in no event exceed the sum of ninety thousand dollars, and that any excess over that sum which may be expended by the Government for purchase of such right of way or other purposes in the said clause mentioned, shall be forthwith repaid by the said Company to the Government.

V. Where no special provision is made, then, for the purpose of ascertaining the damage that may be occasioned to any person whose interests in any lands or tenements may be in any way affected under the provisions of this Act, the Governor shall appoint two persons and the party interested shall appoint a third, which three persons, or any two of them, shall determine the amount of compensation, if any, to be paid to such party, according to his interest therein. And in case such party shall refuse or neglect to appoint an arbitrator within ten days after notice in writing so to do from the said two arbitrators, such two arbitrators shall name a third arbitrator, and the award of any two of them shall be final and binding; and the said arbitrators shall be sworn before a stipendiary Magistrate to do justice between the parties, and may summon and require the attendance before them of all parties interested in the property to be appraised by them, the agents of such parties respectively and all necessary witnesses, and require the production of all deeds and papers requisite to establish the title or interest of any party claiming compensation in manner hereinbefore mentioned, and may examine upon oath, to be administered by any one of such arbitrators, all such parties or their agents and all such witnesses, touching the matters to be enquired into by such arbitrators. If the said arbitrators shall be of opinion that the proprietors of land taken for purposes aforesaid, or any of them, or any party whose land may be taken for indemnity purposes as herein provided, may be indemnified at a less expense by having an equal portion of land assigned to them from any land adjoining, and that such adjoining land may be taken without material injury to the proprietor thereof the said arbitrators shall mark and in like manner appraise so much of the said adjoining land as they may think sufficient to replace the land required as aforesaid, and the same so marked off shall belong to the first mentioned proprietor and be in lieu of all indemnity; and the appraised value of the same shall be paid to the party from whom such land was so

taken, and shall be a full satisfaction and release of the same and of all right and title thereto: Provided that if the land so to be taken shall not be deemed an equivalent for the land so to be appropriated for the said purposes of the said railway and buildings as aforesaid, the said proprietor shall be paid by the Government such sum as may be, with the land so to be given, a full satisfaction for the land so dedicated.

VI. This Act shall be deemed and taken to be a public Act.

# APPENDIX B.

RELATING TO THE GOVERNMENT AND LEGISLATURE OF THE COLONY.

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# DRAFT OF LETTERS-PATENT

## Passed under the Great Seal of the United Kingdom, constituting the office of Governor and Commander-in-Chief of the Island of Newfoundland and its Dependencies.

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[Dated 28th March, 1876.]

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[Victoria R.] *VICTORIA, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.*

To all to whom these Presents shall come, Greeting:

Preamble. Whereas We did, by certain Letters-Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster the sixth day of September, 1869, in the thirty-third year of Our reign, constitute and appoint Our trusty and well-beloved Colonel Stephen John Hill (now Sir Stephen John Hill, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George), Companion of Our Most Honourable Order of the Bath, to be, during Our pleasure, Our Governor and Commander-in-Chief in and over Our Island of Newfoundland and its Dependencies. And whereas We are desirous of making effectual and permanent provision for the office of Governor and Commander-in-Chief in and over Our said Island of Newfoundland and its Dependencies without making new Letters-Patent on each demise of the said office: Now know ye that We have revoked and determined, and by these presents do revoke and determine, the said recited Letters-Patent, and every clause, article, and thing therein contained: And further know ye, that We, of Our special grace, certain knowledge, and mere motion, have thought fit to constitute, order, and declare, and do by these presents constitute, order, and declare, that there shall be a Governor and Commander-in-Chief (hereinafter called Our said Governor) in and over Our Island of Newfoundland, and the islands adjacent, and all the coast of Labrador from the entrance of Hudson's Straits to a line to be drawn due north and south, from Anse Sablon on the said coast to the fifty-second degree of north latitude, and all the islands

Cites Governor's Commission, 6th September, 1869.

Revocation of Governor's Commission.

Office of Governor constituted.

Boundaries defined.

adjacent to that part of the said coast of Labrador, as also of all forts and garrisons erected and established, or which shall be erected and established within or on the islands and coast aforesaid (which said islands and coast, together with the island of Newfoundland, are hereinafter referred to as Our said Colony), and that the person who shall fill the said office of Governor shall be, from time to time, appointed by Commission under Our Sign-Manual and Signet. And We do hereby authorize and command Our said Governor to do and execute in due manner all things that shall belong to his said command, and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of these present Letters-Patent, and of such Commission as may be issued to him under Our Sign-Manuel and Signet, and according to such instructions as may from time to time be given to him under Our Sign-Manuel and Signet, or by Our order in Our Privy Council, or by Us through one of Our principal Secretaries of State, and according to such laws and ordinances as are or shall hereafter be in force in Our said Colony.

Governor's Powers and Authorities.

Appointment of Executive Council.

II.—And We do hereby declare Our pleasure to be that there shall be an Executive Council for Our said Colony, and that the said Council shall consist of such persons as are now or may at any time be declared by any law enacted by the Legislature of Our said Colony to be members of Our said Council, and of such other persons as Our said Governor shall, from time to time, in Our name and on Our behalf, but subject to any law as aforesaid, appoint under the Public Seal to be members of Our said Council.

Legislative Council, Constitution of.

III.—And We do hereby declare Our pleasure to be that there shall be within Our said Colony a Legislative Council which shall consist of such members as at or immediately before the publication of these presents were members of Our said Council, and of such and so many other members as shall hereafter be from time to time nominated and appointed by Us under Our Sign-Manual and Signet, or provisionally appointed by Our said Governor until Our pleasure thereon shall be known: Provided, nevertheless, and We do hereby declare Our pleasure to be, that the total number of the members of the said Legislative Council for the time being resident within Our said colony shall not at any time, by such provisional appointments, be raised to a greater number in the whole than fifteen: Provided also that every member of Our said Council shall hold his place therein during Our pleasure, and shall be removable by any instruction or warrant issued by Us under Our Sign-Manual and Signet, and with the advice of Our Privy Council.

Number.

General Assembly to be summoned.

IV.—And We do authorize and empower Our said Governor, with the advice and consent of Our said Executive Council, by writs issued in Our name, to summon and call together the General Assembly of Our said Colony, and also, from time to time, in the lawful and accustomed manner, to prorogue the Legislative Council and the House of Assembly of Our said Colony, and from time to time to dissolve the said House of Assembly.

Prorogation and Dissolution of the Legislature.

Governor, Legislative Council and Assembly to make laws.

V.—And We do further authorize and empower Our said Governor, with the advice and consent of the said Legislative Council and Assembly of Our said Colony, to make laws for the public peace, welfare, and good government of Our said Colony.

Public Seal.

VI.—And We do further authorize and empower Our said Governor to keep and use the Public Seal of Our said Colony for sealing all things whatsoever that shall pass the said Public Seal.

Grants of land.

VII.—And We do further authorize and empower Our said Governor, in Our name and on Our behalf, to make and execute, under the said Seal, grants and dispositions of any lands which may be lawfully granted or disposed of by Us within Our said Colony.

Appointment of Judges and Justices, &c.

VIII.—And We do further authorize and empower Our said Governor to constitute and appoint in Our name and on Our behalf all such Judges, Commissioners, Justices of the Peace, and other necessary officers and ministers in Our said Colony as may be lawfully constituted or appointed by Us.

Grant of pardons.

IX.—And We do further authorize and empower Our said Governor, as he shall see occasion, in Our name and on Our behalf, when any crime has been committed within Our said Colony, or for which the offender may be tried therein, to grant a pardon to any accomplice, not being the actual perpetrator of such crime, who shall give such information and evidence as shall lead to the apprehension and conviction of the principal offender; and further, to grant to any offender convicted of any crime in any Court, or before any Judge, Justice, or Magistrate, within Our said Colony, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our said Governor may seem fit, and to remit any fines, penalties, or forfeitures, which may become due and payable to Us. Provided always that Our said Governor shall in no case make it a condition of any pardon or remission of sentence that the offender shall be banished from, or shall absent himself from Our said Colony.

Remission of fines; Proviso: Banishment from Colony prohibited.

Suspension or removal from office.

X.—And We further authorize and empower Our said Governor, so far as We lawfully may, upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any such office or place within Our said Colony under or by virtue of any commission or warrant granted, or which may be granted, by Us in Our name or under Our authority.

Succession to the Government.

XI.—And We do hereby declare Our pleasure to be that, in the event of the death, incapacity, removal, or absence of Our said Governor out of Our said Colony, all and every the powers and authorities herein granted to him shall, until Our further pleasure is signified therein, be, and the same are hereby vested in such person as may be appointed by Us under Our Sign-Manual and Signet to be Our Lieutenant-Governor of Our said Colony, or if there shall be no such Lieutenant-Governor in Our said Colony, then in such person or persons as may be appointed by Us under Our Sign-Manual and Signet to administer the Government of the same; and, in case there shall be no person or persons within Our said Colony so appointed by Us, then in the President for the time being of the Legislative Council of Our said Colony.

Officers and others to obey and assist the Governor.

XII.—And We do hereby require and command all Our Officers and Ministers, Civil and Military, and all other inhabitants of Our said Colony, to be obedient, aiding and assisting unto Our said Governor, or, in the event of his death, incapacity, or absence, to such person or persons as may from time to time, under the provisions of these Our Letters-Patent, administer the Government of Our said Colony.

Power reserved to Her Majesty to revoke, alter or amend the present Letters-Patent.

XIII.—And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters-Patent as to Us or them shall seem meet.

Publication of Letters-Patent.

XIV.—And We do further direct and enjoin that these Our Letters-Patent shall be read and proclaimed at such place or places as Our said Governor shall think fit within Our said Colony of Newfoundland.

In witness whereof We have caused these Our Letters to be made patent. Witness Ourself at Westminster, the 28th day of March, in the thirty-ninth year of Our reign.

(By Warrant under the Queen's Sign-Manual.)

C. ROMILLY.

# DRAFT OF INSTRUCTIONS

## Passed under the Royal Sign-Manual and Signet to the Governor and Commander-in-Chief of the Island of Newfoundland and its Dependencies.

[Dated 28th March, 1876.]

*Instructions to Our Governor and Commander-in-Chief in and over Our Island of Newfoundland and its Dependencies, or, in his absence, to Our* [Victoria R.] *Lieutenant-Governor or the Officer Administering the Government of Our said Island and its Dependencies for the time being. Dated this 28th day of March, 1876, in the thirty-ninth year of Our reign.*

Whereas by certain Letters-Patent, bearing even date herewith, We have constituted, ordered and declared that there shall be a Governor and Commander-in-Chief (hereinafter called Our said Governor) in and over Our Island of Newfoundland and its dependencies (hereinafter called Our said Colony). And We have thereby authorized and commanded Our said Governor to do and execute in due manner all things that shall belong to his said command and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters-Patent and of the Commission to be issued to him under Our Sign-Manual and Signet, and according to such instructions as may from time to time be given to him, under Our Sign-Manual and Signet, or by Our order in Our Privy Council, or by Us through one of Our Principal Secretaries of State, and according to such laws and ordinances as are or shall hereafter be in force in Our said Colony. Now, therefore, We do by these Our Instructions under Our Sign-Manual and Signet, declare Our pleasure to be that Our said Governor for the time being shall, with all due solemnity, cause Our Commission under Our Sign-Manual and Signet, appointing Our said Governor for the time being, to be read and published in the presence of the Chief Justice of Our said Colony for the time being, and of the members of Our Executive Council thereof; and We do further declare Our pleasure to be that Our said Gov-

Preamble.

Cites Letters-Patent, 28th March, 1876, constituting the office of Governor.

Publication of Commission.

ernor and every other officer appointed to administer the Government of Our said Colony shall take the Oath of Allegiance in the form provided by an Act passed in the session holden in the thirty-first and thirty-second years of Our reign, intituled "An Act to amend the law relating to Promissory Oaths"; and likewise that he or they take the usual oath for the due execution of the office and trust of Our Governor and Commander-in-Chief in and over Our said Colony, and for the due and impartial administration of justice, which said oaths the Chief Justice for the time being of Our said Colony, or in his absence, or in the event of his being otherwise incapacitated, the senior Judge then present, or, failing such Judge, the senior member present of Our said Executive Council shall and he is hereby required to tender and administer unto him or them.

Oaths to be taken by Governor.

Imperial Act, 31 and 32 Vict., cap. 72.

Oaths to be administered by the Governor.

II.—And we do authorize and require Our said Governor, from time to time and at any time hereafter, by himself or by any other person to be authorized by him in that behalf, to administer to all and to every person or persons as he shall think fit, who shall hold any office or place of trust or profit, the said Oath of Allegiance, together with such other oath or oaths as may from time to time be prescribed by any laws or statutes in that behalf made and provided.

Governor to communicate Instructions to Executive Council.

III.—And We do require Our said Governor to communicate forthwith to Our Executive Council for Our said Colony these Our Instructions, and likewise all such others from time to time as he shall find convenient for Our Service to be imparted to them.

Executive Council not to proceed to business unless summoned by authority of Governor.

Quorum.

IV.—And We do hereby direct and enjoin that Our said Executive Council shall not proceed to the despatch of business unless duly summoned by authority of Our said Governor, and three members at the least (exclusive of himself or the member presiding) be present and assisting throughout the whole of the meetings at which any such business shall be despatched.

Governor to preside;

Or appoint a President;

Senior member to preside during absence of Governor or President;

Precedence of members.

V.—And We do further direct and enjoin that Our said Governor do attend and preside at the meetings of Our said Executive Council, unless when prevented by some necessary or reasonable cause; and that in his absence such member as may be appointed by him in that behalf, or, in the absence of any such member, the senior member of the said Executive Council actually present shall preside at all such meetings, the seniority of the members of the Council being regulated according to the order of their respective appointments as members of Our said Council.

Journals and Minutes of Council to be kept;

VI.—And We do further direct and enjoin that a full and exact journal or minute be kept of all the deliberations, acts, proceedings, votes and resolutions of Our said Executive Council, and that at each meeting of the said Council the minutes of the last meeting be read over, confirmed, or amended, as the case may require, before proceeding to the despatch of any other business. And We do further direct that twice in each year a full transcript of all the minutes of the said Council for the preceding half year be transmitted to Us through one of Our Principal Secretaries of State.

Minutes to be sent home half-yearly.

Governor to consult Executive Council;

VII.—And We do further direct and enjoin that in the execution of the powers and authorities committed to Our said Governor by Our said Letters-Patent, he shall in all cases consult with Our said Executive Council, excepting only in cases which may be of such a nature that, in his judgment, Our service would sustain material prejudice by consulting Our Council thereupon, or when the matters to be decided shall be too unimportant to require their advice, or too urgent to admit of their advice being given by the time within which it may be necessary for him to act in respect of any such matters: Provided that in all such urgent cases he shall subsequently and at the earliest practicable period, communicate to the said Executive Council the measures which he may so have adopted with the reasons thereof.

Proviso: Urgent cases.

Governor may act in opposition to the Executive Council;

VIII.—And We do authorize Our said Governor, in his discretion, and if it shall in any case appear right, to act in the exercise of the power committed to him by Our said Letters-Patent in opposition to the advice which may in any such case be given to him by the members of Our said Executive Council: Provided, nevertheless, that in every such case he shall fully report to Us by the first convenient opportunity such proceeding with the grounds and reasons thereof.

Reporting grounds for so doing.

Legislative Council;

IX.—And whereas We have by Our said Letters-Patent provided that the Legislative Council of Our said Colony shall be constituted in the manner therein appointed: Now We do declare Our pleasure to be that five members of the said Legislative Council shall be a quorum for the despatch of the business thereof.

Quorum.

President.

X.—And We do authorize and empower Our said Governor, from time to time, by an instrument under the public seal of Our said Colony, to appoint one member of the said Legislative Council to preside therein, and to remove him and appoint another in his stead.

Standing rules and orders.

XI.—And We do confirm all Standing Rules and Orders heretofore made by Our authority for ensuring punctuality of attendance of the members of the said Legislative Council, and for the prevention of meetings of the said Council being held without convenient notice to the several members thereof, and for maintaining order and method in the despatch of business, and in the conduct of all debates in the said Council; and We do authorize and empower the said Legislative Council to make such other and further Rules and Orders as may to them appear requisite for the above-mentioned purposes, not being repugnant to these Our Instructions, or to any other Instructions which Our said Governor may receive from Us.

Minutes of proceedings to be kept;

XII.—And We do further direct and enjoin that minutes shall be regularly kept of the proceedings of the said Legislative Council, and that at each meeting of the said Council the minutes of the last preceding meeting be read over, confirmed, or amended, as the case may require, before proceeding to the despatch of any other business. And We do further direct and enjoin that Our said Governor shall transmit fair copies of the Journals and Minutes of the proceedings of the Legislative Bodies of Our said Colony, which he is to require from the clerks or other proper officers in that behalf of the said Legislative Bodies.

Copies of Minutes to be transmitted.

Oaths to be administered to members of Assembly.

XIII.—And whereas We have empowered Our said Governor, by Our said Letters-Patent, to summon and call together the General Assembly of Our said colony; We do further direct and enjoin that the persons thereupon duly elected to be members of the said Assembly shall, before their sitting, take the said Oath of Allegiance, which Oath he shall commission fit persons, under the Seal of Our said Colony, to tender and administer unto them; and until the same shall be so taken, no person shall be capable of sitting, though elected.

Rules to be observed in the enactment of laws.

XIV.—And in the enactment of Laws within Our said Colony, We do direct and enjoin that Our said Governor observes, as far as may be practicable, the following Rules and Instructions, (that is to say):—

Style of laws.

XV.—The style of enacting such laws shall be by "The "Governor, Lieutenant-Governor, or Officer Administering "the Government (as the case may be), Council and Assem- "bly," and no other.

Different subjects not to be mixed in the same law;

XVI.—In passing of all laws, each different matter is to be provided for by a different law, without intermixing in one and the same law such things as have no proper relation

to each other, and no clause is to be inserted in or annexed to any Law which shall be foreign to what the title of such Law imports, and no perpetual clause is to be part of any temporary Law. No clause to be introduced foreign to what the title imports; Temporary laws.

XVII.—Our said Governor is not to assent in Our name to any Bill of any of the classes hereinafter specified, that is to say:— Description of bills not to be assented to.

1. Any Bill for the divorce of persons joined together in Holy Matrimony.

2. Any Bill whereby any grant of Land or money or other donation or gratuity may be made to himself.

3. Any Bill whereby any paper or other currency may be made a legal tender, except the coin of the realm or other gold or silver coin.

4. Any Bill imposing differential duties.

5. Any Bill the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty.

6. Any Bill interfering with the discipline or control of Our forces in Our said Colony by land and sea.

7. Any Bill of an extraordinary nature and importance, whereby Our prerogative, or the rights and property of our subjects not residing in Our said Colony, or the trade and shipping of the United Kingdom and its Dependencies, may be prejudiced.

8. Any Bill containing provisions to which Our assent has been once refused, or which have been disallowed by Us:—

Unless such Bill shall contain a clause suspending the operation of such Bill until the signification in Our said Colony of Our pleasure thereupon, or unless Our said Governor shall have satisfied himself that an urgent necessity exists requiring that such Bill be brought into immediate operation, in which case he is authorized to assent in Our name to such Bill unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed upon Us by Treaty. But he is to transmit to Us, by the earliest opportunity, the Bill so assented to, together with his reasons for assenting thereto. Proviso: Urgent cases.

XVIII.—And We do further direct and enjoin Our said Governor to transmit to Us, through one of Our Principal Secretaries of State, a transcript in duplicate of every law

Laws to be sent home duly authenticated, and to have marginal abstracts;

which has been assented to by him in Our name, together with a marginal abstract thereof duly authenticated under the Public Seal of Our said Colony, and that such transcript shall be accompanied with such explanatory observations as may be required to exhibit the reasons and occasion for proposing such laws; and that in case any such law shall at any time be disallowed, and so signified by Us, Our Heirs and Successors, under Our or their Sign-Manual and Signet, or by order of Our or their Privy Council unto him, then such Law as shall be so disallowed shall from thenceforth cease, determine, and become utterly void and of none effect, anything to the contrary notwithstanding.

Disallowance of laws.

Pardon-power—Regulation of;

XIX.—And whereas We have by Our said Letters-Patent authorized and empowered Our said Governor, as he shall see occasion, in Our name and on Our behalf, to grant to any offender convicted of any crime in any court, or before any Judge, Justice, or Magistrate within Our said Colony, a pardon, either free or subject to lawful conditions: Now We do hereby direct and enjoin Our said Governor to call upon the Judge who presided at the trial of any offender who shall have been condemned to suffer death by the sentence of any court within Our said Colony to make to Our said Governor a written report of the case of such offender, and such report of the said Judge shall by Our said Governor be taken into consideration at the first meeting thereafter which may be conveniently held of Our said Executive Council, where the said Judge may be specially summoned to attend; and Our said Governor shall not pardon or reprieve any such offender as aforesaid, unless it shall appear to him expedient so to do, upon receiving the advice of Our Executive Council therein, but in all such cases he is to decide either to extend or withhold a pardon or reprieve, according to his own deliberate judgment, whether the members of Our said Executive Council concur therein or otherwise; entering, nevertheless, on the minutes of the said Council a minute of his reasons at length, in case he should decide any such questions in opposition to the judgment of the majority of the members thereof.

Judge's report to be laid before the Executive Council;

Governor to take the advice of the Council in such cases;

May exercise his own judgment;

Entering his reasons in the Minutes of Council.

XX.—And We do further direct and enjoin that all Commissions granted by Our said Governor to any person or persons to be Judges, Justices of the Peace, or other officers, shall, unless otherwise provided by law, be granted during pleasure only.

Blue Book.

XXI.—And whereas Our said Governor will receive through one of Our Principal Secretaries of State a book of tables in blank, commonly called the "Blue Book," to be

annually filled up with certain returns relative to the revenue and Expenditure, Militia, Public Works, Legislation, Civil Establishment, Pensions, Population, Schools, Course of Exchange, Imports and Exports, Agricultural Produce, Manufactures, and other matters in the said "Blue Book" more particularly specified with reference to the state and condition of Our said Colony: Now We do hereby direct and enjoin that all such returns be accurately prepared and punctually transmitted to Us from year to year through one of Our Principal Secretaries of State.

XXII.—And whereas great prejudice may happen to Our service and to the security of Our said Colony by the absence therefrom of Our said Governor, he shall not upon any pretence whatsoever quit Our said Colony without having first obtained leave from Us for so doing under Our Sign-Manual and Signet, or through one of Our Principal Secretaries of State. Governor's absence.

V. R.

# DRAFT OF A COMMISSION

## Passed under the Royal Sign-Manual and Signet, appointing Commander Sir John Hawley Glover, R.N., G.C.M.G., to be Governor and Commander-in-Chief of the Island of Newfoundland and its Dependencies.

[Dated 29th March, 1876.]

[Victoria R.] *VICTORIA, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To Our trusty and well-beloved Commander Sir* John Hawley Glover, *R. N., Knight Grand Cross of Our Most Distinguished Order of St. Michael and St. George, greeting:*

We do by this Our Commission under Our Sign-Manual and Signet appoint you, the said John Hawley Glover, until Our further pleasure shall be signified, to be Our Governor and Commander-in-Chief in and over Our Island of Newfoundland and its Dependencies during Our will and pleasure, with all and singular the powers and authorities granted to the Governor of Our said Colony in Our Letters-Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, constituting the office of Governor, bearing date at Westminster, the 28th day of March, 1876, in the thirty-ninth year of Our reign, which said powers and authorities We do hereby authorize you to exercise and perform, according to such Orders and Instructions as Our said Governor for the time being hath already or may hereafter receive from Us. And for so doing this shall be your Warrant.

Officers, &c., to obey the Governor.

II.—And We hereby command all and singular Our Officers, Ministers and loving subjects in Our said Island and its Dependencies, and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

Dated this 29th day of March, 1876, in the thirty-ninth year of Our reign.

(By Her Majesty's Command),

CARNARVON.

Commission appointing
Commander Sir John Hawley Glover, R. N.,
G. C. M. G., to be Governor of Newfoundland.

# PROCLAMATION

## Authorizing the Governor of Newfoundland to call a General Assembly.

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WILLIAM R. [L. S.]

*WILLIAM THE FOURTH, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c., &c., &c.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Whereas, by Our Letters-Patent under the Great Seal of Our United Kingdom aforesaid, bearing date at Westminster the second day of March, 1832, in the second year of Our reign, We have given and granted to Our trusty and well-beloved Sir THOMAS JOHN COCHRANE, Knight, Our Governor and Commander-in-Chief of Our island of Newfoundland, full power and authority to summon and call a General Assembly of the freeholders and householders within Our said island It is therefore Our pleasure, and We hereby declare and make known to all Our loving subjects within the same, that for the purpose of the election of the members of the said Assembly, the said island shall be divided into nine districts, to be called respectively:

The district of St. John's.
The district of Conception Bay.
The district of Fogo.
The district of Bonavista.
The district of Trinity Bay.
The district of Ferryland.
The district of Placentia and St. Mary's.
The district of Burin.
The district of Fortune Bay.

And it is Our further will and pleasure, and We do hereby declare that the before-mentioned district of St. John's shall consist of and include all that part of Our said island bounded by the shore which is situate and lying between Petty Harbor and Broad Cove.

And that the before-mentioned district of Conception Bay shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Broad Cove and Bay Verds Head.

And that the before-mentioned district of Fogo shall consist of and include all that part of Our said island which, bounded in like manner, is situate between Cape St. John and Fogo island, including that island.

And that the before-mentioned district of Bonavista shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Cape Freels and Cape Bonavista.

And that the before-mentioned district of Trinity Bay shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Cape Bonavista and Cape Verds Head.

And that the before-mentioned district of Ferryland shall consist of and include all of that part of Our said island which, bounded in like manner, is situate and lying between Petty Harbor and Cape Race.

And that the before-mentioned district of Placentia and St. Mary's shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Cape Race and Rushoon.

And that the before-mentioned district of Burin shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Rushoon and Garnish.

And that the before-mentioned district of Fortune Bay shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Garnish and Bonne Bay.

And We do further signify and declare Our pleasure to be that the said district of St. John's shall be represented in the said Assembly by three members.

And that the said district of Conception Bay shall be represented in the said Assembly by four members.

And that each of the said districts of Fogo, of Bonavista, of Trinity Bay and of Ferryland, shall be represented in the said Assembly by one member.

And that the said district of Placentia and St. Mary's shall be represented in the said Assembly by two members.

And that each of the said districts of Burin and Fortune Bay shall be represented in the said Assembly by one member.

And it is Our will and pleasure that the Governor for the time being of Our said island do appoint some fit person to be the returning officer within each of the said districts.

And We do further declare Our pleasure to be that Our said Governor do issue in Our name writs for the election of the members of the several districts before mentioned, which writs shall be addressed to the several returning officers aforesaid, and shall by them be returned to the Colonial Secretary for the time being of Our said island,

And it is Our will and pleasure that every man, being of the full age of twenty-one years and upwards, and being of sound understanding, and being Our natural-born subject, or having been lawfully naturalized, and never having been convicted in due course of law of any infamous crime, and having for two years next immediately preceding the day of election occupied a dwelling-house within Our said island as owner or tenant thereof, shall be eligible to be a member of the said House of Assembly.

And it is Our further will and pleasure that every man who, for one year next immediately preceding the day of election, hath occupied a dwelling-house within Our said island as owner or tenant thereof, and who in other respects may be eligible according to the regulations aforesaid to be a member of the said House of Assembly, shall be competent and entitled to vote for the election of members of the said Assembly, in and for the district within which the dwelling-house so occupied as aforesaid may be situate.

And it is Our pleasure that the votes for the members of the said Assembly shall be taken by the said several returning officers at such one or more place or places within each of the said districts as shall for that purpose be appointed in the body of the writ addressed to the returning officer of every such district respectively, and at or within such time or times as shall for the purpose be therein limited; but inasmuch as by reason of the difficulty in internal communication within Our said island, many persons entitled to vote might be prevented from the exercise of such their franchise if in every case it were necessary to attend in person for that purpose, We do therefore declare Our pleasure to be, that in respect of any dwelling-house situate at the distance of more than fifteen miles from the nearest place of election within any of the said districts, the vote of any householder duly qualified as aforesaid may be given without his personal attendance by a written notice subscribed by such voter in the presence of two credible witnesses, and duly attested by their signatures: which notices shall be in such form as Our Governor for the time being of Our said island shall from time to time direct.

And it is Our further pleasure that if any candidate or voter at any such election shall object to any vote thus tendered, it shall be the duty of the returning officer to hear such objection and what may be alleged in support of or in answer to the same, and to examine on oath the parties by or against whom such objection may be raised, and any person or persons who may be adduced as a witness or as witnesses on either side, and upon such hearing to admit or to over-rule any such objection as may to such returning officer appear just and right.

And We further declare Our will to be that the persons in favor of whom the greater number of votes shall be given in any such district shall be publicly declared by such returning officer to be duly elected to be the representatives thereof in the said General Assembly, and shall thereupon be returned and take their seats accordingly: Provided always, that in

cases of peculiar doubt or difficulty it shall be competent to any such returning officer to make a special return setting forth the grounds of such doubt, upon which the said House of Assembly shall afterwards decide.

And it is Our will, and We do further declare that the Assembly so to be chosen as aforesaid, shall continue only during Our pleasure; and that the said Assembly shall not proceed to the despatch of any business unless six members at least shall be present at and during the whole of the deliberations of the said House thereupon.

And whereas it may be necessary, in order to the complete execution of the several purposes aforesaid, that further regulations should be made for the conduct of the said elections and the return of members to serve in the said House of Assembly, We have therefore authorized, and do hereby authorize, Our Governor for the time being of Our said island, by any proclamation or proclamations to be by him from time to time issued in Our name and in Our behalf, to make such further regulations as may be necessary for the conduct of the said elections and for the return of members to serve in the said House of Assembly, and for the due discharge of the duties of the said returning officer, and which regulations shall be of full force, virtue and effect until provision be otherwise made by law; it being, nevertheless, Our pleasure that the regulations so to be made as aforesaid be not repugnant to or inconsistent with the several provisions hereinbefore contained or any of them.

Given at Our Court at St. James's, on the twenty-sixth day of July, 1832, in the third year of Our reign.

# APPENDIX C.

RELATING TO THE ADMINISTRATION OF JUSTICE IN THE COLONY.

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# AN ACT

## For the better Administration of Justice in Newfoundland, and for other purposes.*

5 Geo. IV., Cap. 67.

[17th June, 1824.]

His Majesty may institute a superior Court of Judicature in Newfoundland, which Court shall be a Court of oyer and terminer and general gaol delivery;

Whereas it is expedient to make further provision for the administration of justice in the colony of Newfoundland; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for his Majesty, by his charter or letters patent under the Great Seal, to institute a superior Court of judicature in Newfoundland, which shall be called "The Supreme Court of Newfoundland;" and the said Court shall be a Court of Record, and shall have all civil and criminal jurisdiction whatever in Newfoundland, and in all lands, islands and territories dependent upon the Government thereof, as fully and amply, to all intents and purposes, as his Majesty's Courts of King's Bench, Common Pleas, Exchequer and High Court of Chancery, in that part of Great Britain called England have, or any of them hath; and the said Supreme Court shall also be a Court of oyer and terminer and general gaol delivery in and for Newfoundland, and all places within the government thereof; and shall also have jurisdiction in all cases of crimes and misdemeanors committed on the banks of Newfoundland or any of the seas or islands to which ships or vessels repair from Newfoundland for carrying on the fishery.

Jurisdiction.

Supreme Court to be held by a Chief Judge and two assistant Judges appointed by His Majesty, who may remove them and appoint others;

2. And be it further enacted, that the said Supreme Court shall be holden by a Chief Judge and two assistant Judges, being respectively barristers in England or Ireland *of at least three years* standing, or in some of his Majesty's colonies or plantations, who shall be appointed to such their offices by his Majesty, his heirs and successors: Provided always that it shall be lawful for his Majesty, his heirs and

* N. B.—This Act (generally called "The Judicature Act") was made perpetual by act of the Imperial Parliament, 2 and 3 Wm. 4, Cap. 78.

successors, from time to time as occasion may require, to remove and displace any such Chief Judge or assistant Judge as aforesaid, and in his stead to appoint any other fit and proper person. being a barrister as aforesaid, to be the Chief Judge or assistant Judge of the said Court as the case may be: And provided also that in case any such Chief Judge or assistant Judge shall be absent from Newfoundland, or die, or resign such office, or by reason of sickness or otherwise shall become incapable of performing the duties thereof, then and in every such case it shall be lawful for the Governor or acting Governor of Newfoundland for the time being to nominate and appoint some fit and proper person to act as Chief Judge or assistant Judge, as the case may be, in the place or stead of the Judge so being absent, dying, resigning his office or becoming incapable of performing the duties thereof, until such Judge shall resume the duties of his office, or until a successor shall be appointed by his Majesty, his heirs and successors; and the said Chief Judge and assistant Judges shall respectively have and exercise such and the like powers and authorities in Newfoundland, and all places dependent upon the Government thereof, as any Judge of any of his Majesty's said Courts of King's Bench, Common Pleas and Exchequer, or as the Lord High Chancellor of Great Britain, hath or exercises in England.

Governor of Newfoundland may appoint Judges in certain cases.

Issues of fact to be tried at St. John's by a jury;

**3.** And be it further enacted, that all issues of fact which may be joined between the parties in any action at law originally brought before the said Supreme Court of Record, or which may be joined upon any criminal information or prosecution depending in that court, shall be tried at the town of St. John's, in the island of Newfoundland, by a jury of twelve men; and for the purpose of hearing and trying all suits, actions, and all informations, prosecutions, and other proceedings of what nature and kind soever, which may be brought or commenced in the said Supreme Court, one or more term or terms, or session or sessions of the Court shall be held at the town of St. John's aforesaid, in each year, by the said Chief Judge and assistant Judges, at such time as the Governor or acting Governor of the said colony shall from time to time, by any proclamation to be by him for that purpose issued, direct and appoint.

Appointment of Sessions.

Actions in breach of any law relating to trade of the British colonies in America to be tried according to proceedings in Courts of Vice-Admiralty;

**4.** And be it further enacted, that as often as any information, action or suit shall be brought or prosecuted before the said Supreme Court, for the breach or violation of any law relating to the trade or revenue of the British colonies or plantations in America, such information, action or suit shall be heard and determined by the said Court according to the course of proceeding in similar cases in the Courts of Vice

Admiralty in the said colonies or plantations; and that it shall and may be lawful for the party or parties feeling aggrieved by the judgment or decree of the said Supreme Court, in any such case, to appeal from such judgment or decree to the high Court of Admiralty, or to his Majesty in Council, under such and the like rules and regulations as are observed in appeals from the said Courts of Vice Admiralty. Appeal.

**5.** And be it further enacted, that the said Supreme Court shall have power to grant administration of the effects of intestates and the probate of wills; and that the effects of deceased persons shall not be administered within the island of Newfoundland, or any island, place or territory dependent upon the Government thereof, unless administration or probate shall have been duly granted by the said Supreme Court; and in all cases where the executor or executors of any will in Newfoundland, or the dependencies thereof, upon being duly cited, shall refuse or neglect to take out probate as aforesaid, or where the next of kin shall be absent from Newfoundland, and the effects of the deceased shall appear to the said Supreme Court to be exposed and liable to waste, it shall be lawful for the said Supreme Court to authorise and empower the registrar or clerk of the said Court, or some other fit and proper person, to collect the said effects, and hold or deposit or invest the same in such manner and place, or upon such security, and subject to such orders and directions as shall be made by the said Supreme Court in respect of the custody, control, or disposal of such effects. Supreme Court may grant administration of the effects of intestates and probates of wills, &c.; And appoint receivers.

**6.** And be it further enacted, that the said Supreme Court shall have power and authority to appoint guardians and keepers for infants and their estates, according to the order and course observed in such cases in England; and also to appoint guardians and keepers of the persons and estates of natural fools, and of such as are or shall be deprived of their reason or understanding, so as to be unable to govern themselves and their affairs, which the said Supreme Court shall have the power and authority to inquire of and determine, by inspection of the person, or by such other ways and means as to such Supreme Court shall seem best for ascertaining the truth. Supreme Court may appoint guardians for infants and lunatics.

**7.** And be it further enacted, that it shall and may be lawful for the Governor or acting Governor for the time being of Newfoundland, by proclamation or proclamations to be by him for that purpose issued, to apportion and divide the said colony into three several districts and to fix and ascertain the boundaries and limits of every such district, and such boundaries or limits from time to time to alter as Governor may divide colony into three districts.

occasion may require: Provided always, that such apportionment of the said colony into such districts as aforesaid be made in such manner as to such Governor or acting Governor may appear to be best adapted for enabling the inhabitants of the said colony to resort with ease and convenience to the Circuit Courts, to be therein established as after mentioned.

His Majesty may institute Circuit Courts.

**8.** And be it further enacted, that it shall and may be lawful for his Majesty, by any such charter or letters patent as aforesaid, to institute Circuit Courts in each of the three districts in which the said colony may be so divided as aforesaid; and each of the said Circuit Courts shall be holden once at least in each year by the said Chief Judge or by one of the said assistant Judges of the said Supreme Court of Newfoundland, at such times, and at such one or more places within each of the said districts, as the Governor or acting Governor for the time being of Newfoundland shall from time to time direct and appoint.

Circuit Courts to be Courts of record, exercising the same jurisdiction as the Supreme Court, except in cases of treason and felonies not within benefit of clergy, &c.

**9.** And be it further enacted, that the said Circuit Courts shall be respectively Courts of Record, and shall, within the district in which they may be holden, have and exercise all such and the same jurisdiction, powers, and authority, as is hereby vested in the said Supreme Court of Newfoundland throughout the whole of the said colony; saving and excepting the trying and determining of treasons or misprisions of treason, and felonies not within the benefit of clergy, and the hearing or determining of any information, suit, or action for the breach or violation of any act of parliament relating to the trade and revenue of the British colonies in America, all which said crimes and offences, informations, suits, and actions, shall be tried, inquired of, heard and determined in the said Supreme Court of Newfoundland, and not elsewhere within the said colony.

Crimes cognizable in Circuit Courts and civil actions to be tried by jury according to the law of England.

**10.** And be it further enacted, that all crimes and misdemeanors cognizable in the said Circuit Courts, and all issues of fact which may be joined between the parties in any civil action depending in the said Circuit Courts, shall be enquired of, heard and determined, by the said Circuit Judge, and a jury of twelve men, according to the rules and course of the law of England, as far as the situation and circumstances of the said colony will permit.

**11.** Provided nevertheless, and be it further enacted, that if upon the trial of any crimes or misdemeanors before any of the said Circuit Courts, twelve good and lawful men shall not appear to form a jury, then and in all such cases such

trial shall be had by the Circuit Judge and three assessors, being Justices of the Peace in and for the said colony, or for some district thereof; and the said Justices shall be nominated from time to time to serve as such assessors as aforesaid by the Governor or acting Governor for the time being of the said colony, and shall severally be liable to be challenged or objected to upon the special ground of direct interest or affection, to be specified in open Court at the time of challenge; and in case of such challenge or objection being allowed by the Judge of the said Circuit Court, the Justice of the Peace so challenged or objected to shall be succeeded by another such Justice of the Peace, who shall in like manner be nominated by the Governor or acting Governor for the time being as aforesaid, and be liable in the same manner to challenge or objection, until three such Justices of the Peace shall appear duly qualified for the trial of any offender in the said Circuit Courts respectively; and the said Justices of the Peace shall thereupon severally take and repeat in open Court the same oath as is taken by petit jurors impanelled for the trial of any crime or misdemeanor in a Court of Record in England; and the Judges of the said Circuit Courts respectively shall, together with the said three assessors, give their verdict upon every such trial in open Court; but no person shall be found guilty by any such verdict unless the Judge of the said Court and two at least of his said assessors, shall concur in such verdict; and the proceedings in the said Circuit Courts respectively shall be under the control and direction of the respective Judges thereof, and all matters of law arising in the course of any trial shall be determined by such Judges respectively.

But where a jury shall not be formed trials for crimes shall be had by the Circuit Judge and three assessors, being Justices of the Peace and nominated by the Governor;

Such assessors liable to be challenged;

Verdict to be given in open Court.

**12.** Provided also, and be it further enacted, that if upon the trial of any issue or issues of fact joined between the parties in any suit or action depending in any of the said Circuit Courts, twelve good and lawful men shall not appear to form a jury, all such issues of fact shall be tried and decided by the Judge of such Court alone and without a jury; and that in all cases where the sum or matter at issue in any such suit or action shall exceed or be of the value of more than fifty pounds sterling British money, the Judges of the said Courts respectively shall cause the evidence on any such hearing or trial as aforesaid to be taken down in writing by the clerk or other proper officer in open Court in the presence of the witnesses respectively giving the same, and the evidence so taken shall be entered upon the proceedings of the said Courts respectively, and be of record; and in every case in which any appeal shall be made and allowed under the provisions of this act from any judgment of the said Circuit Courts not founded on the verdict of a jury, copies

Civil actions to be tried by the Judge of the Court alone where a jury shall not be formed;

On appeal, documents to be produced.

of all documents and papers which shall have been produced and given in evidence shall be certified by the said clerk or other proper officer as authentic; and also copies of any documents and papers which shall have been produced and tendered in evidence and rejected, shall, if required by the party producing the same, be in like manner authenticated, but marked by such officer as aforesaid as rejected, in order that all such copies may be annexed to the record as part thereof in case of appeal.

On application of either of the parties before trial, though the sum does not amount to £50, the Judge may permit the evidence to be recorded;

**13**. And be it further enacted, that it shall be lawful for the Judges of the said Circuit Courts respectively, on the application of either of the parties, plaintiff or defendant, at or before the trial of any issue of fact joined in any civil suit or action commenced in the said Circuit Courts respectively, in case such issue is not tried by a jury, to permit the evidence on such trial to be recorded and certified as aforesaid, although the sum or matter at issue may be less in value than fifty pounds sterling, provided it shall be made to appear to such Judge that the judgment, decree, order, or sentence which may be given, made, or pronounced in such suit or action, may be of such importance as to render it proper that an appeal should be permitted; and if, after giving or pronouncing such judgment, decree, or order, the said Judge shall be of opinion that such judgment, decree, or order is of such importance as to make it proper that an appeal should be permitted, it shall be lawful for the said Judge to allow either of the said parties, plaintiff or defendant, to appeal to the Supreme Court, in like manner and under and subject to the like rules and regulations as in and by this Act are directed in other cases of appeal.

Appeal.

Appeal to the Supreme Court may be had on giving notice;

Costs;

**14**. And be it further enacted, that it shall be lawful for the plaintiff or plaintiffs, defendant or defendants, against whom any judgment, decree, or order of the said Circuit Courts respectively shall be given for or in respect of any sum or matter at issue above or exceeding the value of fifty pounds sterling, to appeal therefrom to the said Supreme Court; and the party or parties appealing from such judgment, decree, or order shall, within fourteen days from the passing thereof, give notice to the adverse party or parties of such appeal, and within fourteen days from and after such judgment, decree, or order enter into sufficient security, to be approved by the Judges of the said Circuit Courts respectively, to satisfy or perform the said judgment, decree, or order in case the same shall be affirmed or the appeal dismissed, together with such further costs as shall be awarded thereon; and in all cases of appeal, where notice shall be given and security perfected as aforesaid, execution shall

be stayed, and not otherwise; and the said Supreme Court shall and may inquire into, hear and decide all questions whether of law or or fact arising upon any such appeal, but shall not admit or receive any evidence which was not tendered to the Circuit Court from which such appeal may be brought on the hearing or trial of any such suit or action therein: Provided always, that the said Supreme Court shall not reverse, alter, or inquire into any judgment of the said Circuit Courts, founded on the verdict of a jury, except only for error of law apparent upon the record.

Verdict of jury not to be inquired into.

**15.** And be it further enacted, that as often as any action or suit shall be brought in the Supreme Court, or in either of the said Circuit Courts respectively, and it shall be made to appear to the Court before which such action or suit may be pending, that such action or suit may be more conveniently heard and determined either in the said Supreme Court or in some other of the said Circuit Courts, it shall be lawful for such Court to permit and allow such action or suit to be removed to such other Court, and such allowance shall be certified by the Judge, together with the writ or process and proceedings in such action or suit, to the Court into which such action or suit shall be intended to be removed; and thereupon it shall be lawful for such last-mentioned Court, and such Court is hereby required to proceed in such action or suit in like manner as if the same had been originally commenced and prosecuted in such last-mentioned Court.

Actions may be removed from one Court to another;

On certificate of Judge.

**16.** And be it further enacted, that in all actions at law or suits in equity which shall be brought in the said Courts respectively, where the debt or sum demanded shall not be sworn to as hereinafter mentioned, the defendant or defendants in such action or suit shall be made to appear to such action or suit by summons, to be issued by the Chief Judge of the said Supreme Court, or by the Judges of the said Circuit Courts respectively, and served by the proper officer on the said defendant or defendants personally, or left at his, her or their usual place of abode; and in all cases where such summons shall be disobeyed, or where the debt, damage or thing demanded shall exceed ten pounds sterling money, and shall be sworn to in an affidavit made by the plaintiff or plaintiffs, or his, her or their lawful attorney, then the said defendant or defendants shall be made to appear by attachment of his, her or their goods, debts or effects, or by arrest of the person of the said defendant or defendants; and in case of his, her or their goods, debts or effects being attached as aforesaid, such goods, debts or effects, or so much thereof as shall be judged by the said Court suffi-

Defendants not appearing on summons their goods to be attached or persons arrested, &c.

cient to satisfy the debt or damages, shall be held as security for such debt or damages, and shall abide the order, judgment or decree of the Court issuing such attachment, unless the defendant or defendants, or some person on his, her or their behalf, shall appear and give good and sufficient bail, to be approved by such Court, to satisfy such judgment, decree or order; and where the defendant or defendants has or have been arrested, he, she or they shall not be discharged out of custody until he, she or they shall in like manner have given good and sufficient bail, to be approved by such Court, to satisfy the judgment, decree or order of the Court in the cause in which arrest was made; and it shall also be lawful for the said Courts respectively, when any such action or suit as aforesaid shall be depending therein, to cause to appear from day to day all parties interested therein, and to examine upon oath any of such parties, in case such examination shall appear to the said Court necessary for the discovery of the truth, but not otherwise; and thereupon and after due consideration of all circumstances of the case, to make such order, judgment or decree therein, and award such damages and costs as shall be just and equitable; and such order, judgment or decree shall be enforced by attachment and sale of the goods, debts and effects, or by arrest of the person or persons against whom such order, judgment or decree shall be made, and imprisonment of such person or persons until such order, judgment or decree shall be performed and satisfied.

Powers given for making rules and orders for the proceedings in the Supreme Court and Circuit Courts, &c.

**17.** And be it further enacted, that it shall be lawful for His Majesty, his heirs and successors, by such charter or letters patent as aforesaid, or by any order or orders to be hereafter issued by and with the advice of his or their Privy Council, to make and prescribe, or to authorize and empower the said Supreme Court of Newfoundland, under such limitations as His Majesty shall deem proper, to make and prescribe such rules and orders touching and concerning the forms and manner of proceeding in the said Supreme Court and Circuit Courts respectively, and the practice and pleadings upon all indictments, informations, actions, suits and other matters to be therein brought; or touching or concerning the appointing of commissioners to take bail and examine witnesses; the taking examinations of witnesses *de bene esse*, and allowing the same as evidence; the granting of probates of wills and letters of administration; the proceedings of the sheriff or his deputies, and other ministerial officers; the summoning of assessors for the trial of crimes and misdemeanors in the said Circuit Courts; the process of the said Court, and the mode of executing the same; the empannelling of juries; the admission of barris-

ters, attornies and solicitors; the fees, poundage or perquisites to be lawfully demanded by any officer, attorney or solicitor in the said Courts respectively; and all other matters and things whatsoever touching the practice of the said Courts, as to His Majesty, his heirs and successors, shall seem meet for the proper conduct of business in the said Courts, and such rules and orders from time to time to alter, amend or revoke as to His Majesty, his heirs and successors, shall seem requisite.

Power to the Governor to institute a Court of civil jurisdiction on the coast of Labrador; 51 G. 3, c. 54.

**18.** And whereas it is expedient to make further provision for the administration of justice on the coast of Labrador; be it further enacted, that so much of an Act passed in the fifty-first year of the reign of his said Majesty George the Third, entituled An Act to take away the public use of certain ships' rooms in the town of St. John's, in the island of Newfoundland, and for establishing surrogate Courts on the coast of Labrador and in certain islands adjacent thereto, as relates to the institution of surrogate Courts, shall be, and the same is hereby repealed; and that it shall and may be lawful for the Governor or acting Governor of Newfoundland, for the time being, to institute a Court of civil jurisdiction at any such parts or places on the coast of Labrador or the islands adjacent thereto, which in and by the said act passed in the fifty-first year of the reign of his Majesty George the Third, are re-annexed to the government of Newfoundland, as occasion may require; and such Courts shall be held by one Judge and shall be a Court of Record, and shall have jurisdiction, power and authority to hear and determine all suits and complaints of a civil nature arising within any of the said parts and places on the coast of Labrador or the islands adjacent thereto; and the said Court shall be holden by a Judge who shall be appointed from time to time by the Governor or acting Governor of Newfoundlend, and shall have a clerk and such other ministerial officers as the Governor or acting Governor shall appoint; and the proceedings of the said Court shall be summary, and such forms of process and such rules of practice and proceedings as shall be settled by the Chief Judge of the said Supreme Court, shall be followed by the said Court and no other.

Appeal to Supreme Court in certain cases.

**19.** And be it further enacted, that it shall and may be lawful for the plaintiff or plaintiffs, defendant or defendants, against whom any judgment, decree or order of the said Court shall be given, for or in respect of any sum or matter at issue above fifty pounds sterling, or where the matter in dispute shall relate to the title of any lands, tenements, right of fishery, annual rent or other matter where, in the

judgment of the said Court, rights in future may be bound, to appeal therefrom to the said Supreme Court; and the party or parties appealing from such judgment, decree or order shall within seven days from the passing thereof, give notice to the adverse party or parties of such appeal, and within fourteen days from and after such judgment, decree or order, enter into sufficient security, to be approved by the Judge of the said Court or some person to be appointed by him for that purpose in his absence, to satisfy or perform the said judgment, decree or order, in case the same shall be affirmed or the appeal dismissed, together with such further costs as shall be awarded thereon; and in all cases of appeal where notice shall be given and security perfected as aforesaid, execution shall be stayed and not otherwise.

Appeal from Supreme Court to His Majesty in Council.

**20.** And be it further enacted, that it shall and may be lawful for his Majesty, by his said charter or letters patent, to allow any person or persons feeling aggrieved by any judgment, decree, order or sentence of the said Supreme Court, to appeal therefrom to his Majesty in Council in such manner, within such time, and under and subject to such rules and regulations and limitations as his Majesty by such charter or letters patent respectively shall appoint and direct.

Governor, on arrival of His Majesty's charter, to notify by proclamation when the Courts shall be opened, and thereupon so much of 49 G. 3, c. 27, as relates to the Courts thereby instituted shall be repealed, and proceedings and records of those Courts delivered over to the Courts instituted under this Act.

**21.** And be it further enacted, that the Governor or acting Governor of Newfoundlad upon the arrival in the said colony of his Majesty's charter or letters patent for the establishment of the said Courts by virtue of this act, shall by proclamation notify to the inhabitants of the said colony the time when the said Courts respectively shall be intended to be opened; and as soon as the Judges of the said Supreme Court shall have assumed and entered upon the exercise of their jurisdiction therein, then and from thenceforth so much of the act passed in the forty-ninth year of the reign of his late Majesty George the third, entitled "An act for establishing of Courts of judicature in the island of Newfoundland, and in the islands adjacent; and for re-annexing part of the coast of Labrador, and the islands lying on the said coast, to the Government of Newfoundland," as relates to the Courts thereby instituted, and respectively called the Supreme Court of judicature of the island of Newfoundland, and surrogate Courts, shall cease to be in force and determine; and every suit, action, complaint, matter or thing which shall be depending in such last-mentioned Courts respectively, shall and may be proceeded upon in the Supreme Court instituted under and by virtue of this act, or either of the said Circuit Courts which shall have jurisdiction within the district or place in Newfoundland where such action or suit respectively was depending; and all proceedings which

shall thereafter be had in such action or suit respectively, shall be conducted in like manner as if such action or suit had been originally commenced in one or other of the said Courts instituted under this Act; and all records, muniments and proceedings whatsoever of and belonging to the said Courts instituted under the said recited Act respectively, shall from and immediately after the opening of the said Courts respectively instituted under this Act be delivered over and deposited for safe custody in such of the said Courts respectively instituted under this Act as shall be found most convenient, and all parties concerned shall and may have recourse to the said records and proceedings of the said Courts respectively.

Courts of general and quarter Sessions shall be held at such times and places as the Governor appoint; Their powers.

**22.** And be it further enacted, that Courts of General and Quarter Sessions shall be holden at Newfoundland and its dependencies at such times and places as the Governor or acting Governor of Newfoundland shall by his proclamation appoint; and the said Courts of Sessions respectively shall have power in a summary way to take cognizance of all suits for the payment of debts not exceeding forty shillings, except the matter in dispute shall relate to the title to any lands or tenements, or to the taking or demanding of any fee of office or annual rent, and to award costs therein; and also to hear and determine all disputes, to any amount, which may arise in Newfoundland concerning the wages of seamen or fishermen, the supply of bait, the hiring of boats for the fishery, and all disputes arising in Newfoundland aforesaid concerning the curing or drying of fish, where the sum or matter in question does not exceed or is not of the value of more than five pounds sterling; and the judgment, determination or award of the said Courts of Sessions or Justices respectively, in all such cases, shall be final.

Proceedings in case of insolvency;

**23.** And whereas it is expedient to make provision for declaring insolvencies in Newfoundland; be it therefore enacted, that as often as any writ of attachment, or other process for the recovery of any debt or sum due, shall be issued by the said Supreme or Circuit Courts respectively against any person or persons residing or having a house of trade or carrying on business in Newfoundland, or any place within the Government thereof, and it shall be made to appear to the said Court out of which such writ or process shall have issued, at the return thereof, that the person or persons against whom such writ or process hath issued is or are unable to pay twenty shillings in the pound to all his, her or their creditors, it shall be lawful for such Court to cause the person or persons against whom such process shall have been issued, together with all his, her or their credi-

Notice to parties to attend;

Provisional trustees;

Declaration of insolvency;

Collection and distribution.

tors, to be summoned by public notice to attend the said Court on a certain day, and in the meantime, if it shall appear necessary to the said Court, to appoint one or more of the said creditors as provisional trustee or trustees to discover, collect and receive the estates and effects of such person or persons so appearing to be insolvent, subject to the orders and directions of the said Court; and if, after due examination of the person or persons against whom process shall have issued as aforesaid, or his, her or their lawful agent or agents, or if such person or persons shall abscond or fail to attend the said Court pursuant to summons as aforesaid, it shall be made to appear to the satisfaction of the said Court that such person or persons is or are insolvent, it shall be lawful for the said Court to declare such person or persons insolvent accordingly, and immediately to take order for discovering, collecting and selling the estates, debts and effects of such insolvent, and distributing the produce thereof amongst all his, her or their creditors, and for that purpose to authorize any two or more creditors of the said insolvent or insolvents who shall be chosen by the major part in value of such creditors or their agents duly authorized in such behalf whose debts amount respectively to the sum of twenty pounds and upwards, to act as trustees to such insolvent estate; and such Court shall from time to time make such orders as it shall deem proper for better discovering, collecting, realizing and distributing the estates, debts and effects of the person or persons so declared insolvent, and, as often as occasion shall require, for vesting the same, or any part thereof, in the public funds or securities in England, in the name or names of such person or persons as shall for that purpose be appointed by the said Court, until distribution can be made as hereafter mentioned.

Insolvents, on making disclosure of their effects and conforming to the direction of the Judges, may receive certificates with consent of one-half in number and value of the creditors.

**24.** And be it further enacted, that if such insolvent person or persons shall make a full and true disclosure, discovery and surrender of all his, her or their estates, debts and effects, and shall conform to the orders and directions of the said Judges of the said Courts respectively, the same shall and may, with the consent in writing under the hands of one half in number and value of such creditors of such insolvent or insolvents, be certified by the respective Judges under the seal of the said Courts respectively; and such certificate may be pleaded, and shall be a bar to every suit or action which may at any time thereafter be brought in any Court in the said island or colony of Newfoundland and its dependencies for any debt or contract for payment of money due or entered into by such person or persons prior to the time of his, her or their being declared insolvent as aforesaid; and if any person or persons so declared insolvent

as aforesaid, shall fail to make a true disclosure and discovery of all his, her or their estate or estates and effects, or shall otherwise refuse to conform to the orders or directions of the said Judges respectively, it shall be lawful for the said Judges respectively to cause such person or persons to be arrested and imprisoned until he, she or they shall make such disclosure and discovery, and in all respects conform to the orders of the said Judges respectively.

Creditors for supplies for the fishery for the current season shall be privileged, and be first paid 20s. in the pound;

**25**. And be it further enacted, that in the distribution to be made of the produce of the estates and effects of every person or persons hereafter declared insolvent in Newfoundland or its dependencies as aforesaid, every creditor for supplies necessary and furnished *bona fide* for the fishery during the current season, (that is to say) at any time after the close of the last preceding season of the fishery, shall be considered as a privileged creditor, and shall first be paid twenty shillings in the pound, so far as the estates and effects of such insolvent person or persons which may be realized in Newfoundland or its dependencies will go, and that all other creditors shall be paid equally and rateably: Provided always, that nothing in this act contained shall affect the prior claims of any seamen and other servants actually employed in the catching and taking of fish and oil, upon all fish and oil caught by the hirers or employers of such seamen, fishermen or servants, or the produce or value thereof; and also provided that menial or domestic servants shall in all cases be paid the balance of their last preceding year's wages out of the household furniture, goods and effects of every person so declared insolvent.

Not to affect the prior claims of seamen or domestic servants.

Proceedings in cases where persons die insolvent;

**26**. And whereas it is expedient that the estates and effects of deceased persons which may not be sufficient to pay all their just debts should be distributed according to the manner herein directed concerning the estates and effects of persons declared insolvent; be it further enacted, that as often as any person shall die in Newfoundland, or in any place or sea or territory within the Government thereof, and the estates and effects of such person shall not be sufficient to pay and satisfy all his or her just debts, it shall be lawful for the said Courts respectively, at the petition of the executor or executors, administrator or administrators of such deceased person, or any one or more of his or her creditors, to cause a true statement of the effects and debts of such deceased person to be made in writing by and upon the oath of the executor or executors, administrator or administrators, and laid before the said Courts respectively; and if it shall appear to the Court before which such statement shall be made that the estate and effects of such deceased persons are

not sufficient to pay all his or her just debts, it shall be lawful for such Court to authorize and empower the executor or executors, administrator or administrators of such deceased person to collect, sell, and dispose of all the estates and effects of such deceased person, and to distribute the produce thereof amongst his or her creditors, according to the manner of distribution by this act directed in respect of the estates of persons declared insolvent, and always subject to the orders and directions of such Court: Provided always, that nothing herein contained shall be construed to affect the right of any creditor having a judgment or special security for his or her debts.

Provision for judgment to creditors.

Registrars of deeds appointed.

**27.** And whereas it is expedient that provision should be made for the registration within the said colony of Newfoundland of all deeds, wills, and other assurances whereby any lands or tenements therein situate may be granted, conveyed, demised, mortgaged, charged or otherwise affected; be it further enacted that the chief clerk of the Supreme Court of Newfoundland shall be also the registrar of deeds within the district or circuit in which the town of St John's may be situate, and that the chief clerks of each of the Circuit Courts to be holden in and for the two other districts of the said colony, shall respectively be the registrars of deeds within such other districts or circuits; and in each of the said three districts an office shall be kept by such chief clerk respectively, for the due registration of all such deeds, wills, and other instruments as aforesaid

Deeds shall be registered at the office of registration within the district in which the lands are situate within a certain time.

**28.** And be it further enacted, that all deeds, wills, conveyances, and other assurances in writing, of what nature or kind soever, whereby any lands or tenements situate in the said colony or the dependencies thereof, may be hereafter granted, conveyed, devised, mortgaged, charged or otherwise affected or intended so to be, shall be registered at the office of registration within the district or circuit in which such lands may be situate; and that all such deeds, conveyances, and other assurances as aforesaid, shall be left for registration at such office within six months next after the execution thereof, by the party or parties from whom any interest may pass, in case such party or parties may, at the time of such execution thereof by him, her, or them, be resident within the said colony and its dependencies, or within twelve months in case such party or parties may at that time be resident elsewhere; and all such wills as aforesaid shall be left for registration at such office twelve months next after the death of the testator or testatrix.

**29.** And be it further enacted, that some or one of the parties executing any such deed, conveyance, or other assur-

ance as aforesaid, shall appear before the registrar of deeds, and acknowledge the execution thereof, by them, him, or her; or in case none of the parties to any such deed, conveyance, or assurance shall be resident in the said colony, then the same shall be acknowledged before the said registrar of deeds by some person duly appointed for that purpose as the attorney of such parties; and in that case the execution of every such deed, conveyance, or other assurance shall be further verified by an affidavit to be sworn before the mayor other principal magistrate of any city, town, or place in or near to which such parties respectively may be resident; and such affidavit shall also be preserved and registered at the office of the said registrar of deeds.

How deeds shall be verified before the registrar.

**30**. And be it further enacted, that the registrar of deeds shall and he is hereby required to endorse and subscribe on every such deed, conveyance, or other assurance, a certificate in which shall be expressed the day or time when the same was so acknowledged before him, and the names of the person or persons by whom such acknowledgment was made, and the time when the same was actually registered, and the volume and page in which the registry thereof is entered; and every such certificate so endorsed or subscribed shall be taken and allowed as evidence of the due registration of any such deed, conveyance or assurance.

Registrar to endorse on the deed a certificate of registry.

**31**. And be it further enacted, that the registrar of deeds shall and he is hereby required to enter into a book of registry, to be by him regularly kept for that purpose, a memorial of every deed, conveyance or assurance which shall be so acknowledged before him; and every such memorial shall contain a statement of the year and day of the month on which such deed, conveyance, or assurance shall bear date, the names and additions of all and every the parties, as well as the names and additions, if any, of the several subscribing witnesses thereto, the description at length of the lands or tenements conveyed or intended to be conveyed, charged or affected by such deed, conveyance or assurance, as the same are therein described, and the consideration of every such deed, conveyance, or assurance, as the same may be therein stated; all which memorials shall be entered and recorded in the said book of registry with all convenient dispatch, in the order of time in which the same may have been acknowledged before the said registrar.

Registrar to enter in a book of registry a memorial of the deed acknowledged before him.

**32**. And be it further enacted, that every deed, conveyance or assurance hereafter to be made, whereby any lands or tenements situate in Newfoundland or the dependencies thereof, shall be granted, conveyed, released, charged

Deeds hereafter to be made, conveying lands, &c., not duly registered, declared void.

or incumbered, or intended so to be, which shall not be registered within the time and in the manner hereinbefore mentioned, shall be absolutely null and void to all intents and purposes: Provided always, that every such deed, conveyance or assurance shall be deemed and taken to be a registered deed, conveyance or assurance within the meaning of this Act, from the time when the execution thereof shall be acknowledged in manner aforesaid before such registrar of deeds as aforesaid.

Supreme Court authorized to make rules and orders for the registry of deeds, &c.

**33.** And be it further enacted, that the Judges of the Supreme Court of Newfoundland shall be and they are hereby authorized to make any general rules and orders of Court for maintaining order and regularity in the mode of taking such acknowledgments, and registering such deeds, wills and conveyances, and other assurances as aforesaid, and for executing the duties of the said office of registrar of deeds: Provided that such rules and orders be not in any wise repugnant to the provisions of this present Act in that behalf.

Governor may establish ordinances for the granting of licenses for the retail of ale and spirits, and as to the sums to be paid, and appropriation.

**34.** And whereas the Justices of the Peace in Newfoundland have been used to grant licenses for the retail of ale and spirituous liquors, and it is proper to regulate the sums to be demanded upon such licenses, and to make provisions for the appropriation thereof, and for preventing abuses in the granting of such licenses, and in the sale of spirits by unlicensed persons in the said colony; be it therefore enacted, that it shall and may be lawful for the Governor or acting Governor of Newfoundland to make, establish and ordain such rules and ordinances as to him may seem meet respecting the granting of such licenses, and the recalling the same, and the amount of the sums to be demanded and taken for every such license, and the appropriation of such sums to His Majesty's service in the said colony, and for preventing the retail of ale and spirituous liquors by persons not duly licensed, and to impose such pecuniary fines or other penalties as may be necessary for enforcing obedience to any such rules or ordinances as aforesaid.

His Majesty may grant charters for establishing corporations for the government of towns.

**35.** And be it further enacted, that it shall and may be lawful for His Majesty, by charter or letters patent under the great seal, to constitute and erect such persons as to His Majesty shall seem meet, a body or bodies corporate and politic for the government of any town or towns situate within the said colony of Newfoundland or its dependencies, and to grant to such body or bodies politic and corporate power to make bye-laws for regulating the police of any such town or towns and for the prevention or abatement of nuisances therein, and for the prevention of accidents by

fire; and also to grant to any such body or bodies politic and corporate as aforesaid the power to impose and levy such reasonable and moderate rates and assessments upon the inhabitants and householders in such town or towns as may be necessary for carrying into effect the several purposes aforesaid, or any of them; and it shall also be lawful for His Majesty, his heirs and successors, by any order or orders to be made by and with the advice of his or their Privy Council, to dissolve any such corporation or corporations as aforesaid, upon and subject to such conditions and regulations as may be made in and by any such order or orders in that behalf.

Continuance of Act.

**36.** And be it further enacted, that this Act shall continue and be in force for five years from the passing thereof, and no longer.

# ROYAL CHARTER

## For Establishing the Supreme and Circuit Courts of Newfoundland.

*GEORGE THE FOURTH, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Recital of Act 5 G. 4, c. 67.

Whereas by an Act of Parliament passed in the fifth year of our reign, intitled "An Act for the better Administration of Justice in Newfoundland, and for other purposes," it is amongst other things enacted that it shall and may be lawful for us, by our charter or letters patent under the great seal, to institute a superior Court of Judicature in Newfoundland, which shall be called "the Supreme Court of Newfoundland." And it is thereby further enacted, that the

And of authority to institute Supreme Court.

said Supreme Court shall be holden by a Chief Judge and two assistant Judges, being respectively barristers in England or Ireland of at least three years' standing, or in some of our colonies or plantations. And it is thereby further enacted, that it shall and may be lawful for us, by any such charter or letters patent as aforesaid, to institute Circuit

And Circuit Courts.

Courts in each of the three districts into which the said colony may be so divided, as in the said Act mentioned. And it is thereby further enacted, that it shall be lawful for us, our heirs and successors, by such charter or letters patent as aforesaid, or by any order or orders to be thereafter issued, by and with the advice of our or their Privy Council, to make and prescribe, or to authorize and empower the said Supreme Court of Newfoundland, under such limitations as we shall deem proper, to make and prescribe such rules and orders, touching and concerning the forms and manner of proceeding in the said Supreme Court and Circuit Courts

Recital of authority to make rules and orders, and to empower Supreme Court to make rules and orders.

respectively, and the practice and pleadings upon all indictments, informations, actions, suits, and other matters to be therein brought, or touching or concerning the appointment of commissioners to take bail and examine witnesses; the taking examination of witnesses *de bene esse*, and allowing the same as evidence; the granting of probates of wills and letters of administration; the proceedings of the Sheriff and his deputies, and other ministerial officers; the summoning of assessors for the trial of crimes and misdemeanors in the

said Circuit Courts; the process of the said Courts and the mode of executing the same; the empannelling of juries, the admission of barristers, attorneys and solicitors; the fees, poundage, or perquisites to be lawfully demanded by any officer, attorney or solicitor in the said Courts respectively; and all other matters and things whatsoever, touching the practice of the said Courts, as to us, our heirs and successors, shall deem meet for the proper conduct of business in the said Courts; and such rules and orders from time to time to alter amend or revoke, as to us, our heirs and successors, shall seem requisite. And it is thereby further enacted, that it shall and may be lawful for us, by our said charter or letters patent, to allow any person or persons aggrieved by any judgment, decree, order, or sentence of the said Supreme Court to appeal therefrom to us in Council, in such manner, within such time, and under and subject to such rules, regulations and limitations, as we, by such charters and letters patent, shall appoint and direct. Now, know ye, that we, upon full consideration of the premises, and of our especial grace, certain knowledge and mere motion, have, in pursuance and by virtue of the said Act of Parliament, thought fit to grant, direct and appoint that there shall be within our said colony of Newfoundland a Court which shall be called "the Supreme Court of Newfoundland." And we do hereby create, erect and constitute the said Supreme Court of Newfoundland to be a Court of Record; and do direct and appoint that the same shall be composed of and holden by one Chief Judge and two assistant Judges. And we do hereby give and grant to our said Chief Judge rank and precedence above and before all our subjects whatsoever within the said colony of Newfoundland aforesaid, and the islands, territories and places dependent thereupon, excepting the Governor or acting Governor for the time being of the said colony, and excepting all such persons as by law or usage take place in England before our Chief Justice of our Court of King's Bench. And we do hereby give and grant to our said assistant Judges rank and precedence within our said colony, and the islands, territories and places dependent thereupon, next after our said Chief Judge, the said assistant Judges taking precedence between themselves according to the priority of their respective appointments to the said office, or where they may be both appointed at the same time, then according to their seniority as barristers. And we do further grant, ordain, and appoint that the said Supreme Court of Newfoundland shall have and use, as occasion may require, a seal bearing a device and impression of our royal arms, with an exergue or label surrounding the same, with this inscription "The seal of the Supreme Court of Newfoundland." And we do hereby grant,

And to permit appeals to His Majesty in Council.

Institution of Supreme Court to be a Court of Record, and to be composed and holden by a Chief Judge and two assistant Judges.

Rank and precedence of Chief Judge and assistant Judges.

Seal of Supreme Court.

ordain and appoint that the said seal shall be delivered to and kept in the custody of the said Chief Judge. And we do further grant, ordain and declare that the said Chief Judge and assistant Judges, so long as they shall hold their respective offices, shall be entitled to have and receive the following salaries, that is to say: our said Chief Judge a salary of one thousand two hundred pounds sterling money, by the year; and each of our assistant Judges a salary of seven hundred pounds, like sterling money, by the year; and our Governor or acting Governor for the time being of the said colony is hereby directed and required to cause such salary to be paid to the said Chief Judge and assistant Judges out of the revenue of the said colony by four quarterly payments, at the four most usual days of payment in the year. And we do further grant, ordain, and declare that the said salary shall commence and take place, in respect to any person who shall be resident in Great Britain or Ireland at the time of his appointment, upon and from the day on which any such person shall thereupon embark or depart from Great Britain or Ireland for Newfoundland, and to take upon him the execution of the said office; and that the salary of any such Chief Judge or assistant Judges, who shall at the time of his appointment be resident in Newfoundland aforesaid, shall commence and take place from and after his taking upon him the execution of such office, and that such salary shall be in lieu of all fees of office, perquisites, emoluments and advantages whatsoever; and that no fees of office, perquisite, emolument or advantage whatsoever, other than and except the said salary, shall be accepted, received or taken by such Chief Judge or assistant Judges, in any manner or on any account or pretence whatsoever: Provided nevertheless, that it shall be lawful for the said Chief Judge or assistant Judges to occupy and inhabit any official house or residence within the said colony of Newfoundland which hath been or may hereafter be provided for their or any of their residence and occupation, without paying to us, our heirs and successors any rent for the same, and without being obliged to repair, uphold or maintain any such house or official residence at his own cost and charges. And we do further grant, appoint and declare that no Chief Judge or assistant Judge of the said Supreme Court of Newfoundland, shall be capable of accepting, taking or performing any office or place of profit or emolument on pain that the acceptance of any such other office or places aforesaid, shall be and be deemed in law, *de facto*, an avoidance of the office of such Chief Judge or assistant Judge, as the case may be; and the salary thereof shall cease and be deemed to have ceased accordingly from the time of such acceptance of any such other office or place. And we do hereby constitute and

Salaries of Judges.

Commencement of salary.

To be in lieu of of all fees, &c.

Judges, nevertheless, may occupy official residences without payment of rent and repairs.

Acceptance of place of profit or emolument to be an avoidance of office.

appoint our trusty and well-beloved RICHARD ALEXANDER TUCKER, Esq., to be the first Chief Judge of the said Supreme Court of Newfoundland, the said RICHARD ALEXANDER TUCKER being a barrister in England of three years' standing and upwards. And we do hereby constitute and appoint our trusty and well-beloved AUGUSTUS WALLET DESBARRES and JOHN WILLIAM MOLLOY, Esquires, to be first assistant Judges of the said Supreme Court, the said AUGUSTUS WALLET DESBARRES and JOHN WILLIAM MOLLOY being respectively barristers of three years' standing and upwards. And we do hereby grant, direct and appoint that there shall be within our said colony of Newfoundland three Circuit Courts, to be held in each of the three districts into which the said colony may be divided in pursuance of the said Act of Parliament. And we do hereby erect, create and constitute the said Circuit Courts respectively to be Courts of Record; and do direct and appoint that each of the said Circuit Courts shall be holden by the Chief Judge or one of the assistant Judges of the Supreme Court of Newfoundland aforesaid. And we do direct and appoint that the Chief Judge of the said Supreme Court shall be always at liberty to decide which of the three Circuit Courts shall be holden by him, and that the senior assistant Judge shall be always at liberty to decide which of the two remaining Circuit Courts shall be holden by him. And we do hereby ordain, appoint and declare that there shall be and belong to the said Supreme Court and Circuit Courts respectively, such and so many officers as to the Chief Judge of the said Supreme Court for the time being shall, from time to time, be deemed necessary for the administration of justice and the due execution of all the powers and authorities which are granted and committed to the said Supreme Court and Circuit Courts respectively by the said Act of Parliament, or by these our letters patent: Provided nevertheless, that no office shall be created in the said Courts, or any of them, unless the Governor or acting Governor, for the time being, of our said colony, shall first signify his approbation thereof to our said Chief Judge for the time being, in writing under the hand of such Governor or acting Governor as aforesaid. And we do further ordain and direct, that all persons who shall and may be appointed to the several offices of master, registrar, accountant-general, or prothonotary of the said Supreme Court or Circuit Courts of Newfoundland, or to any office in the said Courts, or any of them, whereof the duties shall correspond to those performed by the master, registrar, accountant-general, or prothonotary of any or either of our Courts of Record at Westminster, shall be so appointed by us, our heirs and successors, by warrant under our or their royal sign manual,

First Chief Judge and assistant Judges.

Circuit Courts.

Chief Judge and senior assistant to choose circuits.

Supreme and Circuit Courts to have so many officers as Chief Judge shall deem necessary.

But no office to be created without the Governor's approbation.

Appointment to offices of master, registrar, &c., to be by warrant under royal sign manual; other officers by the Chief Judge.

to hold such their offices during our or their pleasure; and that all persons who shall and may be appointed to any other office within the said Supreme Court of Newfoundland, or within the said Circuit Courts of Newfoundland, shall be so appointed by the Chief Judge, for the time being, of the said Supreme Court, and shall be subject and liable to be removed from such their offices by the said Chief Judge upon reasonable and sufficient cause. And we do hereby authorize and empower the said Supreme Court of Newfoundland to approve, admit and enrol such and so many persons, having been admitted barristers-at-law or advocates in Great Britain and Ireland, or having been admitted writers, attorneys or solicitors in one of our Courts at Westminster, Dublin or Edinburgh, or having been admitted as proctors in any ecclesiastical Court in England, to act as well in the character of barristers and advocates as of proctors, attorneys and solicitors in the Supreme Court of Newfoundland, and which persons so approved, admitted and enrolled as aforesaid, shall be and are hereby authorized to appear and plead and act for the suitors of the said Supreme Court, subject always to be removed by the said Supreme Court from their station therein upon reasonable cause And we do further authorize the said Supreme Court of Newfoundland to admit and enrol as barristers, advocates, attorneys, proctors, or solicitors therein such and so many persons as may have served a clerkship, under articles in writing, for the term of five years at the least, to any barrister, advocate, proctor, attorney or solicitor of the Supreme Court aforesaid. And we do declare that no person or persons, other than the persons aforesaid, shall be allowed to appear, plead, or act in the Supreme Court of Newfoundland for and on behalf of the suitors of the said Court, or any of them: Provided always, and we do ordain and declare, that in case there shall not be a sufficient number of such barristers-at-law, advocates, solicitors, writers, attorneys, solicitors and proctors, or of persons so admitted and enrolled as aforesaid, to act as such within the said colony, competent and willing to appear and act for the suitors of the said Supreme Court, then and in that case the said Supreme Court of Newfoundland shall and is hereby authorized to admit so many other fit and proper persons to appear and act as barristers, advocates, proctors, attorneys and solicitors as may be necessary according to such general rules and qualifications as the said Supreme Court shall for that purpose make and establish. And we do hereby authorize the said Supreme Court to make and prescribe such rules and orders as to them may seem expedient and necessary with regard to the admission of persons to practice the law, and appear and act in the character

Supreme Court empowered to admit barristers or advocates of Great Britain and Ireland, and attornies, solicitors and writers of Courts at Westminster, Dublin or Edinburgh; also proctors in English ecclesiastical Courts, to act both as barristers, &c., of Supreme Court of Newfoundland.

Also persons serving clerkship of five years to any such barrister or attorney.
No other person to appear and plead.

Proviso in case of insufficient number of such barristers, attorneys, &c.

Court to make rules and orders as to admission of barristers, attorneys, &c.

of barristers and advocates, proctors, attorneys and solicitors in the said Circuit Courts respectively. And we do hereby ordain and declare that the Governor or acting Governor for the time being of the said colony of Newfoundland shall yearly, and on the Monday next following the first day of January in each year, by warrant under his hand and seal, nominate and appoint some fit and proper person to act as and be the Sheriff for our said colony of Newfoundland and its dependencies, other than except the coast of Labrador, for the year ensuing; which Sheriff, when appointed shall, as soon as conveniently may be, and before he shall enter upon his said office take, before the Governor or acting Governor of our said colony, an oath faithfully and impartially to execute the duties of such his office; and such Sheriff shall continue in such his office during the space of one whole year, to be computed from the said Monday next following the first day of January in each year, and until another Sheriff shall be appointed and sworn into the said office. And in case any such Sheriff should die in his said office, or depart from our said colony of Newfoundland and its dependencies, then and in such case another person shall, as soon as conveniently may be after the death or departure of such Sheriff, be in like manner appointed and sworn in as aforesaid, and shall continue in his office for the remainder of the year, and until another Sheriff shall be duly appointed and sworn into the said office. And we do further direct and appoint that it shall and may be lawful for the Governor or acting Governor of the said colony to renew from year to year the appointment of the same person as Sheriff for our said colony and its dependencies; and that in selecting the person to be appointed to the execution and discharge of the said office, the said Governor or acting Governor shall conform to such written instructions or commands as may from time to time be signified by us, our heirs or successors, to him through one of our or their principal secretaries of state And we do further direct that, before entering upon the execution of the duties of his said office, the said Sheriff shall enter into a recognizance to us in the said Supreme Court of Newfoundland, in the sum of five thousand pounds, with two good and sufficient sureties, in the sum of two thousand pounds each, for the due and faithful performance of the duties of such his office, and for the due and punctual payment of all such sums of money as may by him or his lawful deputies be levied or received by virtue of any process, rule or order of the said Supreme Court or Circuit Courts, or any of them. And we do further direct that the said Sheriff shall, on the first Monday of each calendar month, produce before the Chief Judge or one of the assistant Judges aforesaid, a written account of all the money by him or by

Appointment of Sheriff.

To continue in office for one year.

Provision in case of death, &c., of Sheriff.

Securities of Sheriff.

Duties of Sheriff and deputies.

To exhibit monthly accounts.

his lawful deputies received during the calendar month last preceding, and stating the application thereof, so far as the same by him or them have been applied, and also stating the exact balance of such moneys then remaining in the possession of himself or his said deputies, so far as the returns received from such deputies enable him to make out the said accounts And we do further order that the said Chief Judge or assistant Judges, as the case may be, shall cause the said account to be publicly exhibited in the office of the prothonotary or registrar of the said Supreme Court for the space of one calendar month next after the same shall have been so rendered, and shall then cause the same to be enrolled among the records of the said Court And we do further order, direct and appoint that the said Sheriff and his successors shall, by themselves or their sufficient deputies, to be by them appointed and duly authorized under their respective hands and seals, and for whom he and they shall be responsible during his or their continuance in such office, execute, and the said Sheriff, by himself or his lawful deputies, is hereby authorized to execute the writs, summonses, rules, orders, warrants, commands, and process of the said Supreme Court and the said Circuit Courts, and to make return of the same, together with the manner of the execution thereof, to the said Supreme Court and Circuit Courts respectively, and to receive and detain in prison all such persons as shall be committed to the custody of such Sheriff by the said Supreme Court and Circuit Courts respectively, or by the Chief Judge or assistant Judges, or either of them. And we do further direct, ordain and appoint that whenever the said Supreme Court or any of the said Circuit Courts shall direct or award any process against the said Sheriff, or shall award any process in any cause, matter or thing wherein the said Sheriff on account of his being related to the parties or any of them, or by reason of any good cause of challenge which would be allowed against any Sheriff in England, cannot or ought not by law to execute the same, then, and in every such case, the said Supreme Court or the said Circuit Courts, as the case may be, shall name and appoint some other fit person to execute and return the same. And the said process shall be directed to the person so to be named for that purpose; and the cause of such special processes shall be suggested and entered on the records of the Court issuing the same: Provided always, and we do hereby ordain and declare that the said Supreme Court and the said Circuit Courts shall respectively fix certain limits beyond which the said Sheriff shall not be compelled or compellable to go, in person or by his officers or deputies, for the execution of any process of the said Courts respectively; and upon occasion, when

To execute process.

To have custody of prisoners.

How process to be directed, &c., where Sheriff is interested.

Limits of his jurisdiction to be fixed.

the process of any of the said Courts shall be to be executed in any place or places beyond the limits so to be fixed, we grant, ordain and direct that the said Supreme Court or Circuit Courts respectively, as the case may be, shall, upon motion, direct by what person or persons and in what manner such process shall be executed, and the terms and conditions which the party at whose instance the same shall be issued shall enter into in order to prevent any improper use or abuse of the process of the said Courts And the said Sheriff shall, and he is hereby required to grant his special warrant or deputation to such person or persons as the Court making any such order shall direct for the execution of such process; and in that case we direct and declare that the said Sheriff, his heirs, executors or administrators, shall not be responsible or liable for any act to be done in or any way respecting the execution of such process under and by virtue of such special warrant; and that any person or persons being aggrieved under or by virtue of such special warrant, shall and may seek their remedy under any security which may have been directed to be taken upon the occasion, and which the Court issuing such process is hereby authorized to direct to be taken. And it is our further will and pleasure, and we do hereby for us, our heirs and successors, grant and ordain, establish and appoint, that the said Supreme Court shall grant probates under the seal of the said Court of the last wills and testaments of all or any of the inhabitants of the said colony and its dependencies, and of all other persons who shall die and have personal effects within the said colony and its dependencies, and to commit letters of administration, under the seal of the said Supreme Court, of the goods, chattels, credits and all other effects whatsoever of the persons aforesaid who shall die intestate or who shall not have named an executor resident within the said colony and its dependencies, or where the executor being duly cited shall not appear and sue forth such probate, annexing the will to the said letters of administration, when such persons shall have left a will, and to sequester the goods, chattels, credits and other effects whatsoever, of such persons so dying, in cases allowed by the law, as the same is and may be now used in the diocese of London; and to demand, require, take, hear, examine and allow, and, if occasion require, to disallow and reject the accounts of them, in such manner and form as is now used or may be used in the said diocese of London, and to do all other things whatsoever needful and necessary in that behalf: Provided always, and we do hereby authorize and require the said Supreme Court, in such cases as aforesaid, where letters of administration shall be committed with the will annexed for want of an executor appearing in due time to sue forth the probate, to reserve in such letters of

How process to be executed beyond limits.

Special deputation to be granted by Sheriff.

Supreme Court to grant probates and letters of administration, according to the usage in the diocese of London.

administration full power and authority to revoke the same, and to grant probate of the said will to such executor whenever he shall duly appear and sue forth the same. And we do hereby further authorize and require the said Supreme Court of Newfoundland to grant and commit such letters of administration to any one or more of the lawful next of kin of such persons so dying, as aforesaid, being then resident within the jurisdiction of the said Supreme Court, and being of the age of twenty-one years: Provided always, that probates of wills and letters of administration to be granted by the said Supreme Court shall be limited to such moneys, goods, chattels, and effects as the deceased person shall be entitled to within the said colony and its dependencies. And we do hereby further enjoin and require that every person to whom such letters of administration shall be committed, shall, before the granting thereof, give sufficient security by bond to be entered into, to us, our heirs and successors, for the payment of a competent sum of money, with one, two, or more able sureties, respect being had in the sum therein to be contained, and the ability of the sureties, to the value of the estate, credits, and effects of the deceased, which bond shall be deposited in the said Supreme Court, among the records thereof, and there safely kept; and a copy thereof shall be also recorded among the proceedings of the said Supreme Court; and the condition of the said bond shall be to the following effect: "That if the above bounden administrator of the goods, chattels, and effects of the deceased, do make or cause to be made a true and perfect inventory of all and singular the goods, credits, and effects of the said deceased which have or shall come to the hands, possession or knowledge of him the said administrator, or to the hands or possession of any other person or persons for him, and the same so made do exhibit, or cause to be exhibited, in the said Supreme Court of Newfoundland, at or before a day therein to be specified; and the same goods, chattels, credits, and effects, and all other the goods, chattels, credits, and effects of the deceased at the time of his death, or which at any time afterwards shall come to the hands or possession of any such administrator, or to the hands or possession of any such other person or persons for him, shall well and truly administer according to law; and further to make, or cause to be made a true and just account of his said administration at or before a time therein to be specified, and afterwards, from time to time, as he, she, or they shall be lawfully required; and all the rest and residue of the said goods, chattels, credits, and effects which shall be found, from time to time, remaining upon the said administration accounts, the same being first examined and allowed of by the said Supreme Court of Newfoundland, shall and do pay and dispose of in a due course of administra-

Administration to be granted to next of kin.

Probates and administrations only to affect property within the colony.

Administration bond.

Form of it.

tion or in such manner as the said Court shall direct, then this obligation to be void and of none effect, or else to be and remain in full force and virtue" And in case it shall be necessary to put the said bond in suit for the sake of obtaining the effect thereof, for the benefit of such person or persons as shall appear to the said Court to be interested therein, such person or persons from time to time giving satisfactory security for paying all such costs as shall arise from the said suit or any part thereof, such person or persons shall, by order of the said Supreme Court, be allowed to sue the same in the name of the Attorney General for the time being of the said colony, and the said bond shall not be sued in any other manner. And we do hereby authorize and empower the said Supreme Court to order that the said bond shall be put in suit in the name of the said Attorney General. And we do further will, order, and require, that the said Supreme Court shall fix certain periods when all persons to whom probates of wills and letters of administration shall be granted by the said Supreme Court, shall from time to time, until the effects of the deceased shall be fully administered, pass their accounts relating thereto before the said Court; and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed by the said Court, then, or at any earlier time, if the said Supreme Court shall see fit so to direct, the person or persons to whom such probate or administration shall be granted shall deposit and dispose of the balance of money belonging to the estate of the deceased, then in his, her or their hands, and all money which shall afterwards come into his, her or their hands, and also all precious stones, jewels, bonds, bills and securities, belonging to the estate of the deceased, in such manner, and unto such persons, as the said Supreme Court shall direct, for safe custody. And we require that the said Supreme Court shall from time to time make such order as shall be just for the due administration of such assets, and for the payment or remittance thereof as occasion shall require, to or for the use of any person or persons whether resident or not resident in the said colony and its dependencies, who may be entitled thereto or any part thereof as creditors, legatees or next of kin, or by any other right or title whatsoever. And we do hereby, in exercise and in pursuance of the power in us by the said Act of Parliament in that behalf vested, authorize and empower the said Supreme Court of Newfoundland, under such limitations as hereinafter mentioned, to make and prescribe such rules and orders as may be expedient touching and concerning the forms and manner of proceeding in the said Supreme Court and Circuit Courts respectively, and the practice and pleadings upon all indictments, informations, actions, suits, and other matters to be therein

Bond to be sued in name of Attorney General.

Passing of accounts.

Depositing balances.

Distribution.

Supreme Court to prescribe rules and orders as to form and manner of proceeding, and the practice of the Supreme and Circuit Courts.

brought, and touching and concerning the appointment of commissioners to take bail and examine witnesses; the taking examination of witnesses *de bene esse*, and allowing the same as evidence; the granting of probates of wills and letters of administration; the proceedings of the Sheriff and his deputies, and other ministerial officers; the summoning of assessors for the trial of crimes and misdemeanours in the said Circuit Courts; the process of the said Courts and the mode of executing the same; the empannelling of juries; the admission of barristers, attorneys, and solicitors; the fees, poundage or perquisites to be lawfully demanded by any officer, attorney or solicitor in the said Courts respectively; and all other matters and things whatsoever touching the practice of the said Courts, as may be necessary for the proper conduct of business therein; and such rules and orders from time to time to alter, amend or revoke, as may be requisite: Provided always, that no such rules or orders be in anywise repugnant to the said Act of Parliament or this our charter: Provided further, that all such rules and orders be promulgated in the most public and authentic manner in our said colony for three calendar months, at least, before the same shall operate and take effect, and that the same be, by the first convenient opportunity, transmitted through the Governor or acting Governor of our said colony, to us, our heirs and successors, for the signification of our or their pleasure, respecting the allowance or disallowance thereof. And we do hereby direct, ordain and appoint that any person or persons feeling aggrieved by any judgment, decree, order, or sentence of the said Supreme Court may appeal to us, our heirs and successors, in our or their Privy Council, in such manner and within such time and under and subject to such rules, regulations and limitations as are hereinafter mentioned, that is to say: in case any such judgment, decree, order or sentence of the said Supreme Court shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of five hundred pounds sterling, or in case such judgment, decree, order or sentence shall involve directly or indirectly any claim, demand or question of or respecting property, or any civil right amounting to or of the value of five hundred pounds sterling, the person or persons feeling aggrieved by any such judgment, decree, order or sentence of the said Supreme Court, may within fourteen days next after the same shall have been pronounced, made or given, apply to the said Supreme Court by petition for leave to appeal therefrom to us, our heirs and successors, in our or their Privy Council; and in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any sum of money or perform any duty, the said Supreme Court shall and is hereby em-

Proviso.

To be promulgated three months before taking effect:

And to be subject to royal allowances.

Appeal to His Majesty in Council, how regulated.

Sum or matter at issue to be £500, or involve value to that amount.

To petition fourteen days after decree, &c.

Terms of leave to appeal.

powered either to direct that the judgment, decree, order, or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said Court may appear to be most consistent with real and substantial justice. And in case the said Supreme Court shall direct such judgment, decree, order or sentence to be carried into execution, the person or persons in whose favor the same shall be given shall, before the execution thereof, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order as we, our heirs or successors, shall think fit to make thereupon; or in case the said Supreme Court shall direct the execution of any such judgment, decree, order or sentence to be suspended, pending the appeal, the person or persons against whom the same shall have been given, shall in like manner, and before any order for the suspension of any such execution is made, enter into good and sufficient security to the said Supreme Court for the due performance of such judgment or order as we, our heirs and successors, shall think fit to make thereupon. And in all cases we will and require that security shall be given by the party or parties appellant, to the satisfaction of the said Supreme Court, for the prosecution of the appeal and for the payment of all such costs as may be awarded by us, our heirs and successors to the parties or party respondent; and if the last-mentioned security shall be entered into within three months from the date of such petition for leave to appeal, then and not otherwise the said Supreme Court shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her or their appeal to us, our heirs and successors, in our or their Privy Council, in such manner and form and under such rules as are observed in appeals made to us from our plantations or colonies. And we do hereby reserve to ourself, our heirs and successors, in our or their Privy Council, full power and authority upon the humble petition at any time of any person or persons feeling aggrieved by judgment, decree, order or sentence of the said Supreme Court, to refuse or admit his, her or their appeal therefrom, upon such terms and upon such limitations, restrictions and regulations as we or they shall think fit, and to reform, correct, or vary such judgment, decree, order or sentence as to us or them shall seem meet. And it is our further will and pleasure that in all cases of appeal allowed by the said Supreme Court or by us, our heirs and successors, the said Supreme Court shall certify and transmit to us, our heirs or successors, in our or their Privy Council, a true and exact copy of all evidence, proceedings, judgments, decrees, sentences, and orders, had or made in such cases appealed, so far as the same have relation to the matter of appeal, such

Judgment to be stayed on security.

Security to be given to prosecute appeal, &c., within three months from date of petition.

Reservation in case of refusal of leave by Supreme Court.

Copies of proceedings to be certified under seal of Court.

copies being under the seal of the said Court. And we do further direct and ordain, that the said Supreme Court of Newfoundland shall, in all cases of appeal to us, our heirs and successors, conform to and execute or cause to be executed, such judgments and orders as we our heirs and successors, shall think fit to make in the premises, in such manner as any original judgment, sentence, decree or decretal order, or other order or rule of the said Supreme Court of Newfoundland, could or might have been executed. And we do hereby strictly charge and command all Governors, commanders, magistrates, ministers, civil and military, and all our liege subjects within and belonging to the said colony, that in the execution of the several powers, jurisdictions and authorities hereby granted, made, given or created, they be aiding or assisting and obedient in all things, as they will answer the contrary at their peril: Provided always that nothing in these presents contained, or any act which shall be done under the authority hereof, shall extend or be construed to extend to prevent us, our heirs and successors, as far as we lawfully may, from repealing these presents, or any part thereof, or from making such further or other provision, by letters patent, for the administration of justice, civil and criminal, within the said colony, and the places now or at any time hereafter annexed thereto, as to us, our heirs and successors, shall seem fit, in as full and ample manner as if these presents had not been made, these presents or anything herein contained to the contrary notwithstanding. In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, the 19th day of September, in the sixth year of our reign.

Governors, &c., to aid in execution of the charter.

Proviso that nothing herein contained shall prevent the making of further provision for the administration of justice.

*By writ of privy seal.* BATHURST.

# PROCLAMATIONS

## Defining the Limits of the several Judicial Districts of the Colony, under authority of the "Judicature Act," 5 Geo. IV., Cap. 67.

(1.)

*By His Excellency Sir* THOMAS JOHN COCHRANE, *Knight, etc., etc., etc.*

THOS. COCHRANE, [L. S.]

Whereas by an Act passed in the fifth year of the reign of Our Sovereign Lord George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, etc., intituled "An Act for the better Administration of Justice in Newfound-"land and other purposes," it is enacted and declared:

"That it shall and may be lawful for His Majesty, by his Charter or "Letters Patent under the Great Seal, to institute a Supreme Court of "Judicature in Newfoundland, which shall be called 'THE SUPREME COURT "OF NEWFOUNDLAND'"; and that "for the purpose of hearing and trying "all suits, actions, and all informations, prosecutions, and other proceed-"ings of what nature or kind soever, which may be brought or commenced "in the said Supreme Court, one or more term or terms or session or ses-"sions of the said Court shall be held at the town of St. John's aforesaid, "in each year, by the said Chief Judge and Assistant Judges, at such "times as the Governor or acting Governor of the said Colony shall from "time to time, by any proclamation to be by him for that purpose issued, "direct and appoint."

And also, "That it shall and may be lawful for the Governor or "acting Governor for the time being of Newfoundland, by any proclama-"tion or proclamations to be by him for that purpose issued, to apportion "and divide the said Colony into three several districts and to fix and "ascertain the boundaries and limits of every such district, and such "boundaries or limits from time to time to alter as occasion may require"

And whereas it is in and by the said Act further declared and enacted "That it shall and may be lawful for His Majesty, by any such "Charter or Letters Patent as aforesaid, to institute Circuit Courts in "each of the three districts into which the said Colony may be so divided "as aforesaid, and that each of the said Circuit Courts shall be holden "once at least in each year by the said Chief Judge, or by one of the said "Assistant Judges of the said Supreme Court of Newfoundland, at such "times and at such one or more place or places within each of the said "districts as the Governor or acting Governor for the time being of New-"foundland shall from time to time direct and appoint."

And also "That the Governor or acting Governor of Newfoundland, "upon the arrival in the said Colony of His Majesty's Charter or Letters "Patent for the establishment of the said Courts by virtue of this Act, "shall, by proclamation, notify to the inhabitants of the said Colony the "time when the said Courts respectively shall be intended to be opened."

And whereas His Majesty's said Charter or Letters Patent under the Great Seal, bearing date at Westminster the 19th day of September, in the sixth year of His Majesty's reign, hath arrived in this Colony, and His Majesty hath therein and thereby, of his special grace and in pursuance and by virtue of the said Act of Parliament, thought fit to grant, direct and appoint that there shall be within the Colony of Newfoundland a Court which shall be called "THE SUPREME COURT OF NEWFOUNDLAND," and hath thereby created, erected and constituted the said Supreme Court to be a Court of Record, and directed and appointed that the same shall be composed of and holden by one Chief Judge and two Assistant Judges: And by His Majesty's said Royal Charter hath also granted, directed and appointed that there shall be within His Majesty's said Colony three Circuit Courts, to be held in each of the three districts into which the said Colony may be divided in pursuance of the said Act of Parliament, and hath created, erected and constituted the said Circuit Courts respectively to be Courts of Record, and hath directed and appointed that each of the said Circuit Courts shall be holden by the Chief Judge or one of the Assistant Judges of the Supreme Court of Newfoundland as aforesaid.

Now, therefore, in pursuance of the powers and authority to me given by the said Act of Parliament, and in compliance with the requisitions and provisions of same and of the said Royal Charter, I, the said Governor, by and with the advice of His Majesty's Council, do, by this my proclamation, direct and appoint that the said Colony of Newfoundland shall be and the same is hereby divided into three several districts, to be respectively called the Central, Northern and Southern Districts, and to be respectively comprised and contained within the following limits and boundaries, that is to say: That the Central District shall be bounded on the northward and westward by Conception Bay, and extend along the said Bay from Cape St. Francis to the settlement called Harbour Main, including the said settlement, together with the islands within the said Bay called Belle Isle and those immediately adjacent, and that the said Central District shall further extend from the said Cape St. Francis, southwardly, to Bay Bulls, inclusive, which will form the southern boundary thereof, and by a line drawn direct from Bay Bulls to Harbour Main aforesaid;

That the Northern District shall comprise and include every place, part and portion of the Island of Newfoundland and the bays and rivers of the same, and the islands in or adjacent thereunto, and dependent on the Government of the said Colony, lying and situate between the northern and western limits of the before-described Central District and Cape Norman in the Straits of Bell Isle, inclusive of the settlements contiguous to the said Cape;

And that the Southern District shall comprise and include every place, part and portion of the said Island of Newfoundland and the bays and rivers of the same, and the islands in or adjacent thereunto and dependent on the Government thereof, lying and situate between Cape Norman aforesaid, and proceeding by the western and southern and eastern shores of the Bay Bulls aforesaid: And in order to prevent all doubt with regard to the extent of the interior jurisdiction of the said Circuit Courts in the said Districts, it is hereby declared that the said jurisdiction shall extend from the sea coast of the one district until it meets equidistant the district immediately opposite.

And I do also hereby notify to the inhabitants of this Colony, and to all others whom it may concern, that the Supreme Court of Newfoundland, instituted by virtue of the before in part recited Act of Parliament and of His Majesty's Charter, will be open at St. John's, on Monday the second day of January next, and that the Central, Northern and Southern Circuit Courts will be respectively opened at St. John's, Harbour Grace and Ferryland on the fifteenth day of May next.

And I do hereby direct and appoint that there shall be three terms or sessions of the Supreme Court to be holden at the town of St. John's during the year ensuing the date of this proclamation; and that the first of such terms or sessions shall commence on the second Wednesday in the month of April next, and continue for the space of three weeks thence next ensuing; and that the second term or session of the said Court shall commence on the second Wednesday in the month of July next, and continue for the space of six weeks thence next ensuing; and that the third session or term of the said Court shall commence on the fourth Wednesday in the month of November next, and continue for the space of three weeks thence next ensuing.

GIVEN under my Hand and Seal, at the Government House, St. John's, Newfoundland, this 10th day of December, in the sixth year of the reign of His Majesty King George the Fourth, and in the year of Our Lord 1825.

(By command of His Excellency the Governor),

(Signed), E. B. BRENTON,
*Secretary.*

(2.)

*By His Excellency* THOMAS JOHN COCHRANE, *Knight,*
THOS. COCHRANE, [L. S.] *Governor and Commander-in-Chief, etc., etc.*

Whereas by an Act passed in the fifth year of His Majesty's reign, intituled "An Act for the better Administration of Justice in Newfoundland, and for other purposes," it is declared and enacted that the Circuit Courts for this Colony shall be holden in each year at such times and at such one or more place or places within each of the three Districts of the said Colony as the Governor or acting Governor for the time being of Newfoundland shall from time to time direct and appoint; and also that it shall and may be lawful for the said Governor or acting Governor, by any proclamation or proclamations to be by him for that purpose issued, to fix and ascertain the boundaries and limits of the three several districts of the said Colony, and such boundaries or limits from time to time to alter as occasion may require.

* * * * * * * *

And whereas it hath been represented unto me that the public convenience will be promoted by extending the boundary of the said Central District to the southward, so as to include the River La Manche in the said District; and also that it would be a like convenience to annex the settlement called Harbour Main, in Conception Bay, (heretofore belonging to the Central District) to the Northern District, I, the said Governor, do therefore hereby order, direct and appoint that henceforth the southern boundary of the said Central District shall be and the same is hereby enlarged and extended from Bay Bulls to the River La Manche, inclusive, and thence in and by a line drawn direct from the River La Manche to Harbour Main aforesaid, exclusive.

And I do also order, direct and appoint that the said settlement called Harbour Main shall henceforward be and the same is hereby annexed to the said Northern District of this Colony.

GIVEN under my Hand and Seal, at the Government House, St. John's, the 21st day of August, 1826, in the seventh year of His Majesty's reign.

(By command of His Excellency),

(Signed), E. B. BRENTON,
*Secretary.*

# COLONIAL COURTS OF ADMIRALTY ACT, 1890.

## 53 & 54 VIC., CAP. 27.

**An Act to amend the Law respecting the Exercise of Admiralty Jurisdiction in Her Majesty's Dominions and elsewhere out of the United Kingdom.**

[25TH JULY, 1890.]


SECTION
1.—Short title.
2.—Colonial Courts of Admiralty.
3.—Power of Colonial legislature as to Admiralty jurisdiction.
4.—Reservation of Colonial law for Her Majesty's assent.
5.—Local Admiralty appeal.
6.—Admiralty appeal to the Queen in Council.
7.—Rules of court.
8.—Droits of Admiralty and of the Crown.
9.—Power to establish Vice-Admiralty Court.
10.—Power to appoint a vice-admiral.
11.—Exception of Channel Islands and other possessions.
12.—Application of Act to courts under Foreign Jurisdiction Acts.
13.—Rules for procedure in slave trade matters.
14.—Orders in Council.
15.—Interpretation.
16.—Commencement of Act.
17.—Abolition of Vice-Admiralty Courts.
18.—Repeal.


Enacting clause.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

**1.** This Act may be cited as the Colonial Courts of Admiralty Act, 1890.

Colonial Courts of Admiralty.

**2.** (1.) Every court of law in a British possession, which is for the time being declared in pursuance of this Act to be a court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its other civil jurisdiction, and such court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority, the expression "court of law" for the purposes of this section includes Governor.

(2.) The jurisdiction of a Colonial Court of Admiralty shall subject to the provisions of this Act, be over the like places, persons, matters, and things, as the Admiralty juris-

diction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations.

(3.) Subject to the provisions of this Act any enactment referring to a Vice-Admiralty Court, which is contained in an Act of the Imperial Parliament or in a Colonial law, shall apply to a Colonial Court of Admiralty, and be read as if the expression "Colonial Court of Admiralty" were therein substituted for "Vice-Admiralty Court" or for other expressions respectively referring to such Vice-Admiralty Courts or the judge thereof, and the Colonial Court of Admiralty shall have jurisdiction accordingly.

Provided as follows:

*(a.)* Any enactment in an Act of the Imperial Parliament referring to the Admiralty jurisdiction of the High Court in England, when applied to a Colonial Court of Admiralty in a British possession, shall be read as if the name of that possession were therein substituted for England and Wales; and

27 & 28 Vict., c. 25.
36 & 39 Vict., c. 88.

*(b.)* A Colonial Court of Admiralty shall have under the Naval Prize Act, 1864, and under the Slave Trade Act, 1873, and any enactment relating to prize or the slave trade, the jurisdiction thereby conferred on a Vice-Admiralty Court and not the jurisdiction thereby conferred exclusively on the High Court of Admiralty or the High Court of Justice; but, unless for the time being duly authorised, shall not by virtue of this Act exercise any jurisdiction under the Naval Prize Act, 1864, or otherwise in relation to prize; and

*(c.)* A Colonial Court of Admiralty shall not have jurisdiction under this Act to try or punish a person for an offence which according to the law of England is punishable on indictment; and

*(d.)* A Colonial Court of Admiralty shall not have any greater jurisdiction in relation to the laws and regulations relating to Her Majesty's Navy at sea, or under any Act providing for the discipline of Her Majesty's Navy, than may be from time to time conferred on such court by Order in Council.

(4.) Where a Court in a British possession exercises in respect of matters arising outside the body of a county or other like part of a British possession any jurisdiction exerciseable under this Act, that jurisdiction shall be deemed to be exercised under this Act and not otherwise.

**3.** The legislature of a British possession may by any Colonial law,

Power of Colonial legislature as to Admiralty jurisdiction.

(*a.*) declare any court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such court of its jurisdiction under this Act, and limit territorially, or otherwise, the extent of such jurisdiction; and

(*b.*) confer upon any inferior or subordinate court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such regulations and with such appeal (if any) as may seem fit;

Provided that any such Colonial law shall not confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty.

Reservation of Colonial law for Her Majesty's assent.

**4** Every Colonial law which is made in pursuance of this Act, or affects the jurisdiction of or practice or procedure in any court of such possession in respect of the jurisdiction conferred by this Act, or alters any such Colonial law as above in this section mentioned, which has been previously passed, shall, unless previously approved by Her Majesty through a Secretary of State, either be reserved for the signification of Her Majesty's pleasure thereon, or contain a suspending clause providing that such law shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed.

Local Admiralty appeal.

**5.** Subject to rules of court under this Act, judgments of a court in a British possession given or made in the exercise of the jurisdiction conferred on it by this Act, shall be subject to the like local appeal, if any, as judgments of the court in the exercise of its ordinary civil jurisdiction, and the court having cognizance of such appeal shall for the purpose thereof possess all the jurisdiction by this Act conferred upon a Colonial Court of Admiralty.

Admiralty appeal to the Queen in Council.

**6.** (1) The appeal from a judgment of any court in a British possession in the exercise of the jurisdiction conferred by this Act, either where there is as of right no local appeal

or after a decision on local appeal, lies to Her Majesty the Queen in Council.

(2.) Save as may be otherwise specially allowed in a particular case by Her Majesty the Queen in Council, an appeal under this section shall not be allowed—

(*a*) from any judgment not having the effect of a definitive judgment unless the court appealed from has given leave for such appeal, nor

(*b*) from any judgment unless the petition of appeal has been lodged within the time prescribed by rules, or if no time is prescribed within six months from the date of the judgment appealed against, or if leave to appeal has been given then from the date of such leave.

(3.) For the purpose of appeals under this Act, Her Majesty the Queen in Council and the Judicial Committee of the Privy Council shall, subject to rules under this section, have all such powers for making and enforcing judgments whether interlocutory or final, for punishing contempts, for requiring the payment of money into court, or for any other purpose, as may be necessary, or as were possessed by the High Court of Delegates before the passing of the Act transferring the powers of such court to her Majesty in Council, or as are for the time being possessed by the High Court in England or by the court appealed from in relation to the like matters as those forming the subject of appeals under this Act.

(4.) All Orders of the Queen in Council or the Judicial Committee of the Privy Council for the purposes aforesaid or otherwise in relation to appeals under this Act shall have full effect throughout Her Majesty's dominions, and in all places where Her Majesty has jurisdiction.

(5.) This section shall be in addition to and not in derogation of the authority of Her Majesty in Council or the Judicial Committee of the Privy Council arising otherwise than under this Act, and all enactments relating to appeals to Her Majesty in Council or to the powers of Her Majesty in Council or the Judicial Committee of the Privy Council in relation to those appeals, whether for making rules and orders or otherwise, shall extend, save as otherwise directed by Her Majesty in Council, to appeals to Her Majesty in Council under this Act.

Rules of court.

**7.** (1.) Rules of court for regulating the procedure and practice (including fees and costs) in a court in a British

possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees and costs in the said court in the exercise of its ordinary civil jurisdiction respectively are made:

Provided that the rules under this section shall not, save as provided by this Act, extend to matters relating to the slave trade, and shall not (save as provided by this section) come into operation until they have been approved by Her Majesty in Council, but on coming into operation shall have full effect as if enacted in this Act, and any enactment inconsistent therewith shall, so far as it is so inconsistent, be repealed.

(2.) It shall be lawful for Her Majesty in Council, in approving rules made under this section, to declare that the rules so made with respect to any matters which appear to Her Majesty to be matters of detail or of local concern may be revoked, varied, or added to, without the approval required by this section.

(3.) Such rules may provide for the exercise of any jurisdiction conferred by this Act by the full court, or by any judge or judges thereof, and subject to any rules, where the ordinary civil jurisdiction of the court can in any case be exercised by a single judge, any jurisdiction conferred by this Act may in like case be exercised by a single judge.

Droits of Admiralty and of the Crown.

**8.** (1.) Subject to the provisions of this section nothing in this Act shall alter the application of any droits of Admiralty or droits of or forfeitures to the Crown in a British possession; and such droits and forfeitures, when condemned by a court of a British possession in the exercise of the jurisdiction conferred by this Act, shall, save as is otherwise provided by any other Act, be notified, accounted for, and dealt with in such manner as the Treasury from time to time direct, and the officers of every Court of Admiralty and of every other court in a British possession exercising Admiralty jurisdiction shall obey such directions in respect of the said droits and forfeitures as may be from time to time given by the Treasury.

(2.) It shall be lawful for Her Majesty the Queen in Council by Order to direct that, subject to any conditions, exceptions, reservations, and regulations contained in the Order, the said droits and forfeitures condemned by a court in a British possession shall form part of the revenues of that possession either for ever or for such limited term or subject to such revocation as may be specified in the Order.

(3.) If and so long as any of such droits or forfeitures by virtue of this or any other Act form part of the revenues of the said possession the same shall, subject to the provisions of any law for the time being applicable thereto, be notified, accounted for, and dealt with in manner directed by the Government of the possession, and the Treasury shall not have any power in relation thereto.

Power to establish Vice-Admiralty Courts.

**9.** (1.) It shall be lawful for Her Majesty, by commission under the Great Seal, to empower the Admiralty to establish in a British possession any Vice-Admiralty Court or Courts.

(2.) Upon the establishment of a Vice-Admiralty Court in a British possession, the Admiralty, by writing under their hands and the seal of the office of Admiralty, in such form as the Admiralty direct, may appoint a judge, registrar, marshal, and other officers of the court, and may cancel any such appointment; and in addition to any other jurisdictions of such court, may (subject to the limits imposed by this Act or the said commission from Her Majesty) vest in such court the whole or any part of the jurisdiction by or by virtue of this Act conferred upon any courts of that possession, and may vary or revoke such vesting, and while such vesting is in force the power of such last-mentioned courts to exercise the jurisdiction so vested shall be suspended.

33 & 34 Vict., c. 90.
35 & 36 Vict., c. 19.
38 & 39 Vict., c. 51.

(*a.*) Provided that nothing in this section shall authorise a Vice-Admiralty Court so established in India or in any British possession having a representative legislature, to exercise any jurisdiction, except for some purpose relating to prize, to Her Majesty's Navy, to the slave trade, to the matters dealt with by the Foreign Enlistment Act, 1870, or the Pacific Islands Protection Acts, 1872 and 1875, or to matters in which questions arise relating to treaties or conventions with foreign countries, or to international law; and

(*b.*) In the event of a vacancy in the office of judge, registrar, marshal, or other officer of any Vice-Admiralty Court in a British possession, the Governor of that possession may appoint a fit person to fill the vacancy until an appointment to the office is made by the Admiralty.

(3.) The provisions of this Act with respect to appeals to Her Majesty in Council from courts in British possessions in the exercise of the jurisdiction conferred by this Act shall apply to appeals from Vice-Admiralty Courts, but

the rules and orders made in relation to appeals from Vice-Admiralty Courts may differ from the rules made in relation to appeals from the said courts in British possessions.

(4.) If Her Majesty, at any time by commission under the Great Seal, so directs, the Admiralty shall, by writing under their hands and the seal of the office of Admiralty, abolish a Vice-Admiralty Court established in any British possession under this section, and upon such abolition the jurisdiction of any Colonial Court of Admiralty in that possession which was previously suspended shall be revived.

Power to appoint a Vice-Admiral.

**10.** Nothing in this Act shall affect any power of appointing a vice-admiral in and for any British possession or any place therein; and whenever there is not a formally appointed vice-admiral in a British possession or any place therein, the Governor of the possession shall be *ex officio* vice-admiral thereof.

Exception of Channel Islands and other possessions.

**11.** (1.) The provisions of this Act with respect to Colonial Courts of Admiralty shall not apply to the Channel Islands.

(2.) It shall be lawful for the Queen in Council, by Order, to declare, with respect to any British possession which has not a representative legislature, that the jurisdiction conferred by this Act on Colonial Courts of Admiralty shall not be vested in any court of such possession, or shall be vested only to the partial or limited extent specified in the Order.

Application of Act to courts under Foreign Jurisdiction Acts.

**12.** It shall be lawful for Her Majesty the Queen in Council, by Order, to direct that this Act shall, subject to the conditions, exceptions and qualifications (if any) contained in the Order, apply to any Court established by Her Majesty for the exercise of jurisdiction in any place out of Her Majesty's dominions which is named in the Order as if that Court were a Colonial Court of Admiralty, and to provide for carrying into effect such application.

Rules for procedure in slave trade matters.

**13.** (1.) It shall be lawful for Her Majesty the Queen in Council, by Order, to make rules as to the practice and procedure (including fees and costs) to be observed in and the returns to be made from Colonial Courts of Admiralty and Vice-Admiralty Courts in the exercise of their jurisdiction in matters relating to the slave trade, and in and from East African Courts as defined by the Slave Trade (East African Courts) Acts, 1873 and 1879.

(2.) Except when inconsistent with such Order in Council, the rules of court for the time being in force in a Colonial

Court of Admiralty or Vice-Admiralty Court shall, so far as applicable, extend to proceedings in such court in matters relating to the slave trade.

(3.) The provisions of this Act with respect to appeals to Her Majesty in Council, from courts in British possessions in the exercise of the jurisdiction conferred by this Act, shall apply, with the necessary modifications, to appeals from judgments of any East African court made or purporting to be made in exercise of the jurisdiction under the Slave Trade (East African Courts) Acts, 1873 and 1879.

Orders in Council.

**14.** It shall be lawful for Her Majesty in Council from time to time to make Orders for the purposes authorized by this Act, and to revoke and vary such Orders, and every such Order while in operation shall have effect as if it were part of this Act.

Interpretation.

**15.** In the construction of this Act, unless the context otherwise requires,—

The expression "representative legislature" means, in relation to a British possession, a legislature comprising a legislative body of which at least one half are elected by inhabitants of the British possession.

The expression "unlimited civil jurisdiction" means civil jurisdiction unlimited as to the value of the subject-matter at issue, or as to the amount that may be claimed or recovered.

The expression "judgment" includes a decree, order and sentence.

The expression "appeal" means any appeal, rehearing or review; and the expression "local appeal" means an appeal to any court inferior to Her Majesty in Council.

The expression "Colonial law" means any Act, ordinance, or other law having the force of legislative enactment in a British possession and made by any authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for such possession.

Commencement of Act.

**16.** (1.) This Act shall, save as otherwise in this Act provided, come into force in every British possession on the first day of July, one thousand eight hundred and ninety-one:

(*a.*) Provided that this Act shall not come into force in any of the British possessions named in the first

schedule to this Act until Her Majesty so directs by Order in Council, and until the day named in that behalf in such Order; and

(*b.*) If before any day above mentioned rules of court for the Colonial Court of Admiralty in any British possession have been approved by Her Majesty in Council, this Act may be proclaimed in that possession by the Governor thereof, and on such proclamation shall come into force on the day named in the proclamation.

(2.) The day upon which this Act comes into force in any British possession shall, as regards that British possession, be deemed to be the commencement of this Act

(3.) If, on the commencement of this Act in any British possession, rules of court have not been approved by Her Majesty in pursuance of this Act, the rules in force at such commencement under the Vice-Admiralty Courts Act, 1863, and in India the rules in force at such commencement regulating the respective Vice-Admiralty Courts or Courts of Admiralty in India, including any rules made with reference to proceedings instituted on behalf of Hsr Majesty's ships, shall, so far as applicable, have effect in the Colonial Court or Courts of Admiralty of such possession, and in any Vice-Admiralty Court established under this Act in that possession, as rules of court under this Act, and may be revoked and varied accordingly; and all fees payable under such rules may be taken in such manner as the Colonial Court may direct, so however that the amount of each such fee shall so nearly as practicable be paid to the same officer or person who but for the passing of this Act would have been entitled to receive the same in respect of like business. So far as any such rules are inapplicable or do not extend, the rules of court for the exercise by a court of its ordinary civil jurisdiction shall have effect as rules for the exercise by the same court of the jurisdiction conferred by this Act.

(4.) At any time after the passing of this Act any Colonial law may be passed, and any Vice-Admiralty Court may be established and jurisdiction vested in such Court, but any such law, establishment or vesting shall not come into effect until the commencement of this Act.

Abolition of Vice-Admiralty Courts.

**17.** On the commencement of this Act in any British possession, but subject to the provisions of this Act, every Vice-Admiralty Court in that possession shall be abolished, subject as follows:—

(1.) All judgments of such Vice-Admiralty Court shall be executed and may be appealed from in like

Abolition of Vice-Admiralty Courts.

manner as if this Act had not passed, and all appeals from any Vice-Admiralty Court pending at the commencement of this Act shall be heard and determined, and the judgment thereon executed as nearly as may be in like manner as if this Act had not passed;

(2.) All proceedings pending in the Vice-Admiralty Court in any British possession at the commencement of this Act shall, notwithstanding the repeal of any enactment by this Act, be continued in a Colonial Court of Admiralty of the possession in manner directed by rules of court, and, so far as no such rule extends, in like manner, as nearly as may be, as if they had been originally begun in such court;

(3.) Where any person holding an office, whether that of judge, registrar or marshal, or any other office in any such Vice-Admiralty Court in a British possession, suffers any pecuniary loss in consequence of the abolition of such court, the Government of the British possession, on complaint of such person, shall provide that such person shall receive reasonable compensation (by way of an increase of salary or a capital sum, or otherwise) in respect of his loss, subject nevertheless to the performance, if required by the said Government, of the like duties as before such abolition;

(4.) All books, papers, documents, office furniture, and other things at the commencement of this Act belonging or appertaining to any Vice-Admiralty Court, shall be delivered over to the proper officer of the Colonial Court of Admiralty or be otherwise dealt with in such manner as, subject to any directions from Her Majesty, the Governor may direct;

(5.) Where, at the commencement of this Act in a British possession, any person holds a commission to act as advocate in any Vice-Admiralty Court abolished by this Act, either for Her Majesty or for the Admiralty, such commission shall be of the same avail in every court of the same British possession exercising jurisdiction under this Act as if such court were the court mentioned or referred to in such commission.

**18.** The Acts specified in the second schedule to this Act shall, to the extent mentioned in the third column of that schedule, be repealed as respects any British possession as from the commencement of this Act in that possession, and as respects any courts out of Her Majesty's dominions as from the date of any Order applying this Act : Repeal.

Provided that—

(*a*) Any appeal against a judgment made before the commencement of this Act may be brought and any such appeal and any proceedings or appeals pending at the commencement of this Act may be carried on and completed and carried into effect as if such repeal had not been enacted; and

(*b*.) All enactments and rules at the passing of this Act in force touching the practice, procedure, fees, costs and returns in matters relating to the slave trade in Vice-Admiralty Courts and in East African Courts shall have effect as rules made in pursuance of this Act, and shall apply to Colonial Courts of Admiralty, and may be altered and revoked accordingly.

## FIRST SCHEDULE.

Section 16.

BRITISH POSSESSIONS IN WHICH OPERATION OF ACT IS DELAYED.

New South Wales.
Victoria.
St. Helena.
British Honduras.

## SECOND SCHEDULE.

ENACTMENTS REPEALED.

Section 18.

| SESSION AND CHAPTER. | TITLE OF ACT. | EXTENT OF REPEAL. |
|---|---|---|
| 56 Geo. 3, c. 82. | An Act to render valid the judicial Acts of Surrogates of Vice-Admiralty Courts abroad, during vacancies in office of Judges of such courts. | The whole Act |
| 2 & 3 Will. 4, c. 51. | An Act to regulate the practice and the fees in the Vice-Admiralty Courts abroad, and to obviate doubts as to their jurisdiction. | The whole Act. |
| 3 & 4 Will. 4, c. 41. | An Act for the better administration of justice in His Majesty's Privy Council. | Section two. |
| 6 & 7 Vict., c. 38. | An Act to make further regulations for facilitating the hearing appeals and other matters by the Judicial Committee of the Privy Council. | In section two, the words "or from any Admiralty or Vice-Admiralty Court," and the words "or the Lords Commissioners of Appeals in pries causes or their surrogates."<br>In section 3, the words "and the High Court of Admiralty of England," and the words "and from any Admiralty or Vice-Admiralty Court."<br>In section 5, from the first "the High Court of Admiralty" to the end of the section.<br>In section 7, the words "and from Admiralty or Vice-Admiralty Courts." |

SECOND SCHEDULE—(Continued.)

| Session and Chapter. | Title of Act. | Extent of Repeal. |
|---|---|---|
| 6 & 7 Vict., c. 38. | An Act to make further regulations for facilitating the hearing appeals and other matters by the Judicial Committee of the Privy Council. | Section 9 and 10, so far as relates to maritime causes.<br>In section 12, the words "or maritime."<br>In section 15, the words "and Admiralty and Vice-Admiralty." |
| 7 & 8 Vict., c. 69. | An Act for amending an Act passed in the fourth year of the reign of His late Majesty, entitled "An Act for the better administration of justice in His Majesty's Privy Council," and to extend its jurisdiction and powers. | In section 12, the words "and from Admiralty and Vice-Admiralty Courts," and so much of the rest of the section as relates to maritime causes. |
| 26 Vic., c. 24. | The Vice-Admiralty Courts Act, 1863. | The whole Act. |
| 30 & 31 Vict., c. 45. | The Vice-Admiralty Courts Act Amendment Act, 1867. | The whole Act. |
| 36 & 67 Vict., c. 59. | The Slave Trade (East African Courts) Act, 1873. | Sections 4 and 5. |
| 36 & 37 Vict., c. 88. | The Slave Trade Act, 1873. | Section 20 as far as relates to the taxation of any costs, charges and expenses which can be taxed in pursuance of this Act.<br>In section 23, the words "under the Vice-Admiralty Courts Act, 1863." |
| 38 & 39 Vict., c. 51. | The Pacific Islanders Protection Act, 1875. | So much of section 6 as authorises Her Majesty to confer Admiralty jurisdiction on any court. |

# APPENDIX D.

EXTRACTS FROM TREATIES RELATING TO FISHERIES OF NEWFOUNDLAND AND ACTS (IMPERIAL) GIVING EFFECT THERETO.

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# I.

# EXTRACTS

## From Treaties between Great Britain and France, relating to the Fisheries.

TREATY OF UTRECHT—1713.

ARTICLE 13. "The Island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Great Britain; and to that end the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French, shall be yielded and given up, within seven months from the exchange of the ratification of this treaty, or sooner, if possible, by the most Christian King, to those who have a Commission from the Queen of Great Britain for that purpose. Nor shall the most Christian King, his heirs and successors, or any of their subjects, at any time hereafter, lay claim to any right to the said island and islands, or to any part of it or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish, or to resort to the said island beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France to catch fish, and to dry them on land, in that part only, and in no other besides that, of the said island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence, running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the river St. Lawrence and in the gulph of the same name, shall hereafter belong of right to the French, and the most Christian King shall have all manner of liberty to fortify any place or places there."

TREATY OF PARIS—1763.

ARTICLE 5. "The subjects of France shall have the liberty of fishing and drying on a part of the coasts of Newfoundland, such as it is specified in the 13th article of the treaty of Utrecht, which article is renewed and confirmed by the present treaty (except what relates to the island of Cape Breton, as well as to the other islands and coasts in the mouth and gulph of St. Lawrence); and his Britannic Majesty consents to leave to the subjects of the most Christian King the liberty of fishing in the gulph of St. Lawrence, on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the continent as those of the islands

situated in the said gulph of St. Lawrence. And as to what relates to the fishery on the coasts of the island of Cape Breton out of the said gulph, the subjects of the most Christian King shall not be permitted to exercise the said fishery but at the distance of fifteen leagues from the coasts of the island of Cape Breton, and the fishery on the coasts of Nova Scotia or Acadia, and every where else out of the said gulph, shall remain on the foot of former treaties."

ARTICLE 6. "The King of Great Britain cedes the islands of St. Pierre and Miquelon in full right to his most Christian Majesty, to serve as a shelter to the French fishermen; and his said most Christian Majesty engages not to fortify the said islands, to erect no buildings upon them, but merely for the convenience of the fishery; and to keep upon them a guard of fifty men only for the police."

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TREATY OF VERSAILLES—1783.

ARTICLE 4. "His Majesty the King of Great Britain is maintained in his right to the island of Newfoundland, and to the adjacent islands, as the whole was assured to him by the thirteenth article of the treaty of Utrecht; excepting the islands of St. Pierre and Miquelon, which are ceded in full right by the present treaty to his most Christian Majesty."

ARTICLE 5. "His Majesty the most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid article of the treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland, in fifty degrees north latitude; and his Majesty the King of Great Britain consents, on his part, that the fishery assigned to the subjects of his most Christian Majesty, beginning at the said Cape St. John, passing to the north, and descending by the western coast of the island of Newfoundland, shall extend to the place called Cape Ray, situated in forty-seven degrees fifty minutes latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present article, as they had the right to enjoy that which was assigned to them by the treaty of Utrecht."

ARTICLE 6. "With regard to the fishery in the gulph of St. Lawrence, the French shall continue to exercise it, conformably to the fifth article of the treaty of Paris."

DECLARATION OF HIS BRITANNIC MAJESTY.

"The King having entirely agreed with his most Christian Majesty upon the articles of the definitive treaty, will seek every means which shall not only insure the execution thereof, with his accustomed good faith and punctuality, and will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

"To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, his Britannic Majesty will take the most

positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishery of the French, during the temporary exercise of it which is granted to them upon the coasts of the island of Newfoundland; but he will, for this purpose, cause the fixed settlements which shall be formed there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts and fishing vessels.

"The thirteenth article of the treaty of Utrecht, and the method of carrying on the fishery, which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there. It shall not be deviated from by either party, the French fishermen building only their scaffolds, confining themselves to the repair of their fishing vessels, and not wintering there; the subjects of his Britannic Majesty, on their part, not molesting in any manner the French fishermen during their fishing, nor injuring their scaffolds during their absence.

"The King of Great Britain, in ceding the islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations, and the fishery between the said islands and that of Newfoundland shall be limited to the middle of the channel.

"Given at Versailles, the 3rd September, 1783.

(L. S.) "MANCHESTER."

COUNTER DECLARATION OF HIS MOST CHRISTIAN MAJESTY.

"The principles which have guided the King in the whole course of the negotiations which preceded the re-establishment of peace, must have convinced the King of Great Britain that his Majesty has had no other design than to render it solid and lasting by preventing, as much possible, in the four quarters of the world, every subject of discussion and quarrel.

"The King of Great Britain undoubtedly places too much confidence in the uprightness of his Majesty's intentions not to rely upon his constant attention to prevent the islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.

"As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two sovereigns, upon this matter it is sufficiently ascertained by the fifth article of the treaty of peace signed this day, and by the declaration likewise delivered to-day by his Britannic Majesty's Ambassador Extraordinary and Plenipotentiary; and his Majesty declares that he is fully satisfied on this head.

"In regard to the fishery between the island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on by either party but to the middle of the channel; and his Majesty will give the most

positive orders that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen.

"Given at Versailles, the 3rd of September, 1783.

(L. S.) "GRAVIER DE VERGENNES."

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TREATY OF PARIS—1814.

ARTICLE 8. "His Britannic Majesty, stipulating for himself and his allies, engages to restore to his most Christian Majesty, within the term which shall be hereafter fixed, the colonies, fisheries, factories and establishments of every kind which were possessed by France on the 1st January, 1792, in the seas and on the continents of America, Africa and Asia, with the exception, however, of the islands of Tobago and St. Lucie, and the isle of France and its dependencies, especially Rodrigues and Les Schelles, which several colonies and possessions his most Christian Majesty cedes in full right and sovereignty to his Britannic Majesty, and also the portion of St. Domingo ceded to France by the treaty of Basle, and which his most Christian Majesty restores in full right and sovereignty to his Catholic Majesty."

ARTICLE 13. "The French right of fishery upon the Great Bank of Newfoundland, upon the coasts of the island of that name, and of the adjacent islands in the gulph of St. Lawrence, shall be replaced upon the footing in which it stood in 1792."

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TREATY OF PARIS—1815.

ARTICLE 11. "The treaty of Paris, of the thirteenth of May, one thousand eight hundred and fourteen, and the final act of the Congress of Vienna, of the ninth of June, one thousand eight hundred and fifteen, are confirmed, and shall be maintained in all such of their enactments which shall not have been modified by the article of the present treaty."

# II.

# EXTRACT

## From the Convention between Great Britain and the United States, dated 20th October, 1818.

ARTICLE 1. Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof to take, dry and cure fish on certain coasts, bays, harbours and creeks of his Britannic Majesty's dominions in America, it is agreed between the high contracting parties, that the inhabitants of the said United States shall have for ever, in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameo islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon islands, on the shores of the Magdalen islands, and also on the coasts, bays, harbours, and creeks from Mount Joli, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly, indefinitely along the coast, without prejudice however to any of the rights of the Hudson's Bay company; and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the said ground; and the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbours of his Britannic Majesty's dominions in America, within the above mentioned limits: Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

# III.

## 28 GEO. III., CAP. 35.

**An Act to enable His Majesty to make such Regulations as may be necessary to prevent the inconvenience which might arise from the competition of His Majesty's subjects and those of the Most Christian King, in carrying on the fishery on the coasts of the island of Newfoundland.**

[A. D. 1788.]

Treaty of Utrecht.

Whereas, by the thirteenth article of the treaty concluded at Utrecht on the fourth day of April, new stile, in the year of our Lord one thousand seven hundred and thirteen, between her late Majesty Queen Anne and the most Christian King Louis the Fourteenth, it was, among other things, agreed, that the island called Newfoundland, with the adjacent islands, should, from that time forward, belong of right wholly to Britain; and to that end the town and fortress of Placentia and whatever other places in the said island were in the possession of the French, should be yielded and given up, within seven months from the exchange of the ratifications of that treaty, or sooner if possible, by the most Christian King, to those who had a commission from the Queen of Great Britain for that purpose; nor should the most Christian King, his heirs or successors, or any of their subjects, at any time thereafter, lay claim to any right to the said island and islands, or to any part of them; moreover, it should not be lawful for the subjects of France to fortify any place in the said island of Newfoundland, or to erect any buildings there, besides stages made of boards and huts necessary and useful for drying of fish, or to resort to the said island beyond the time necessary for fishing and drying fish: That it should be allowed to the subjects of France to catch fish and to dry them on land, on that part only, and in none other besides that part of the island of Newfoundland which stretches from the place called Cape Bonavista, to the northern point of the said island, and from thence running down by the western side, and reaches as far as the place called Cape Riche; and whereas, by the fifth article

Treaty of Paris.

of the treaty of peace, concluded at Paris on the tenth day of February, one thousand seven hundred and sixty-three, between his Majesty and the late most Christian King Louis the Fifteenth, and his most Catholick Majesty, it was, among

other things, agreed, that the subjects of France should have the liberty of fishing and drying on a part of the coast of the island of Newfoundland, such as is specified in the thirteenth article of the treaty of Utrecht, which article is confirmed and renewed by the present treaty; and whereas by the fifth article of the definite treaty of peace, concluded at Versailles, between his Majesty and the most Christian King, on the third day of September, one thousand seven hundred and eighty-three, it was, among other things, agreed, that his Majesty, the King of Great Britain, should be maintained in his right to the island of Newfoundland, and to the adjacent islands, as the whole were assured to him by the thirteenth article of the treaty of Utrecht, excepting the islands of Saint Pierre and Miquelon, which were ceded in full right, by the said treaty of the third day of September, one thousand seven hundred and eighty-three, to his most Christian Majesty; and that his Majesty, the most Christian King, in order to prevent the quarrels which had before then arisen between the two nations of England and France, consented to remove the right of fishing which belonged to him in virtue of the aforesaid article of the treaty of Utrecht from Cape Bonavista to Cape Saint John, situated on the eastern coast of Newfoundland, in fifty degrees north latitude, and his Majesty the King of Great Britain consented, on his part, that the fishery assigned to the subjects of his most Christian Majesty, beginning at the said Cape St. John, passing to the north, and descending by the western coast of the island of Newfoundland, should extend to the place called Cape Rage, situate in forty-seven degrees and fifty minutes latitude*: The French fishermen should enjoy the fishery which was assigned to them by the said article, as they had the right to enjoy that which was assigned to them by the treaty of Utrecht: And whereas, by a declaration delivered by his Majesty's Ambassador Extraordinary to his most Christian Majesty, bearing date also on the said third day of September, one thousand seven hundred and eighty-three, his Majesty engaged not only to insure the execution of the last-mentioned treaty with his known good faith and punctuality, but to give all possible efficacy to such principles as may prevent dispute; and, that the fishermen of the two nations may not give cause for daily quarrels, was pleased to engage that he would take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishing of the French, during the temporary exercise thereof which is granted to them upon the coasts of the island of Newfoundland, and that he would, for that purpose, cause the permanent settlements

Treaty of Versailles.

Declaration of His Britannic Majesty, of 3rd Sept., 1783.

* The reading here seems to be incorrect, but the roll is so.

which should be formed there to be removed; and that he would give orders that the French fishermen should not be incommoded in the cutting of wood necessary for the repair of their scaffolds, huts and fishing boats; and that the thirteenth article of the treaty of Utrecht, and the method of carrying on the fishery which had at all times been acknowledged, should be the plan upon which the fishery should be carried on there, and that it should not be deviated from by either party, the French fishermen building only their scaffolds, confining themselves to the repair of their fishing vessels, and not wintering there; the subjects of his Britannic Majesty, on their part, not molesting in any manner the French fishermen during their fishing, nor injuring their scaffolds during their absence; and whereas it is expedient, in conformity to the definite treaty of peace and the declaration aforesaid, that his Majesty's subjects should be prevented from interrupting in any manner, by their competition, the aforesaid fishery of the subjects of His most Christian Majesty, during the temporary exercise thereof which is granted to them on the coast of Newfoundland; and that all permanent establishments on that part of the coast allotted to the French fishermen should be removed; and that such fishermen should be in no manner molested, contrary to the tenor of the said treaty, and the good faith thereof; in order, therefore, that his Majesty may be the better enabled to carry the said several treaties and declarations into faithful and punctual execution, and to make such regulations as may be expedient, respecting the fishery, in the manner hereinafter mentioned, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in the present Parliament assembled, and by the authority of the same, that it shall and may be lawful for his Majesty, his heirs and successors, by advice of council, from time to time, to give such orders and instructions to the Governor of Newfoundland, or any officer or officers on that station, as he or they shall deem proper or necessary to fulfil the purposes of the definitive treaty and declaration aforesaid; and, if it shall be necessary to that end, to give orders and instructions to the Governor or other officer or officers aforesaid, to remove or cause to be removed, any stages, flakes, train vats or other works whatever, for the purpose of carrying on the fishery, erected by his Majesty's subjects on that part of the coast of Newfoundland which lies between Cape St. John, passing to the north, and descending by the western coast of the said island to the place called Cape Rage, and also all ships, vessels and boats belonging to his Majesty's subjects, which shall be found within the limits aforesaid, to

His Majesty may give orders to Governor of Newfoundland, &c.

compel any of his Majesty's subjects to depart from thence; any law, usuage or custom to the contrary notwithstanding.

Refusing to conform to directions of Governor.

2. And be it further enacted by the authority aforesaid, that if any person or persons shall refuse, upon requisition made by the Governor or officer or officers acting under him, in pursuance of his Majesty's orders or instructions as aforesaid, to depart from within the limits aforesaid, or otherwise to conform to such requisition and directions as such Governor or other officer as aforesaid shall make or give for the purposes aforesaid, every such person or persons so refusing or otherwise offending against the same, shall forfeit the sum of two hundred pounds, to be recovered in the Court of Session or Court of Vice-Admiralty in the said island of Newfoundland, or by bill, plaint or information, in any of his Majesty's Courts of Record at Westminster; one moiety of such penalty to belong to his Majesty, his heirs, and successors, and the other moiety to such person or persons as shall sue or prosecute the same: Provided always, that every such suit or prosecution, if the same be commenced in Newfoundland, shall be commenced within three months; and if commenced in any of his Majesty's Courts of Record at Westminster, within twelve months from the time of the commission of such offence.

Penalty.

Limitation of suit.

# IV.

## 59 GEO. III., CAP. 38.

**An Act to enable his Majesty to make regulations with respect to the taking and curing fish on certain parts of the coasts of Newfoundland, Labrador, and his Majesty's other possessions in North America, according to a convention made between his Majesty and the United States of America.**

[14th June, 1819.]

Convention dated 20th Oct., 1818.

Whereas a convention between his Majesty and the United States of America was made and signed at London, on the twentieth day of October, one thousand eight hundred and eighteen; and by the first article of the said convention, reciting that differences had arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry and cure fish in certain coasts, bays, harbors and creeks of his Britannic Majesty's dominions in America, it is agreed, that the inhabitants of the said United States shall have for ever, in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors and creeks from Mount Joly on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast without prejudice however to any of the exclusive rights of the Hudson's Bay company; and it was also by the said article of the said convention agreed, that the American fishermen should have liberty for ever to dry and cure fish in any of the unsettled bays, harbours and creeks of the southern part of the coast of Newfoundland above described, and of the coast of Labrador, but that so soon as the same, or any portion thereof, should be settled, it should not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors or possessors of the ground; and whereas it is expedient that his Majesty should be enabled to carry into execution so much of the said convention as is above recited, and to make regulations for that purpose; be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this

present Parliament assembled, and by the authority of the same, that from and after the passing of this act, it shall and may be lawful for his Majesty, by and with the advice of his Majesty's Privy Council, by any order or orders in Council, to be from time to time made for that purpose, to make such regulations, and to give such directions, orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, or to any other person or persons whomsoever, as shall or may be from time to time deemed proper and necessary for the carrying into effect the purposes of the said convention, with relation to the taking, drying and curing of fish by inhabitants of the United States of America, in common with British subjects, within the limits set forth in the said article of the said convention, and hereinbefore recited; any act or acts of Parliament, or any law, custom or usage to the contrary in anywise notwithstanding.

His Majesty in Council may make regulations for carrying the convention into effect.

2. And be it further enacted, that from and after the passing of this act it shall not be lawful for any person or persons, not being a natural-born subject of his Majesty, in any foreign ship, vessel or boat, nor for any person in any ship, vessel or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, to fish for, or to take, dry or cure any fish of any kind whatever, within three marine miles of any coasts, bays, creeks or harbours whatever, in any part of his Majesty's dominions in America, not included within the limits specified and described in the first article of the said convention, and hereinbefore recited; and that if any such foreign ship, vessel or boat, or any persons on board thereof, should be found fishing, or to have been fishing, or preparing to fish within such distance of such coasts, bays, creeks or harbours, within such parts of his Majesty's dominions in America out of the said limits as aforesaid, all such ships, vessels and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered and condemned by such and the like ways, means and methods, and in the same Courts, as ships, vessels or boats may be forfeited, seized, prosecuted and condemned for any offence against any laws relating to the revenue of customs, or the laws of trade and navigation, under any act or acts of the Parliament of Great Britain, or of the United Kingdom of Great Britain and Ireland; provided that nothing in this act contained shall apply, or be construed to apply to the ships or subjects of any Prince, power or state in amity with his Majesty, who are entitled by treaty with his Majesty to any privilege of taking, drying or curing fish on the coasts, bays, creeks or harbours, or within the limits in this act described.

Foreigners and persons in foreign vessels not to fish within a certain distance of any British harbor in America not included in the limits prescribed by the convention.

Penalty.

Proviso for vessels of powers entitled thereto by treaty.

American fishermen may enter such harbors for purposes herein mentioned, subject to such regulations as may be issued to prevent the abuse of the treaty.

3. Provided always, and be it enacted, that it shall and may be lawful for any fisherman of the said United States to enter into any such bays or harbours of his Britannic Majesty's dominions in America as are last mentioned, for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever; subject nevertheless to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying or curing fish in the said bays or harbours, or in any other manner whatever abusing the said privileges by the said treaty and this act reserved to them, and as shall for that purpose be imposed by any order or orders to be from time to time made by his Majesty in Council under the authority of this act, and by any regulations which shall be issued by the Governor or person exercising the office of Governor in any such parts of his Majesty's dominions in America, under or in pursuance of any such order in Council as aforesaid.

Refusing upon requisition to remove, or disobeying orders.

4. And be it further enacted, that if any person or persons, upon requisition made by the Governor of Newfoundland, or the person exercising the office of Governor, or by any Governor or person exercising the office of Governor in any other parts of his Majesty's dominions in America as aforesaid, or by any officer or officers acting under such Governor or person exercising the office of Governor, in the execution of any orders or instructions from his Majesty in Council, shall refuse to depart from such bays or harbours; or if any person or person shall refuse or neglect to conform to any regulations or directions which shall be made or given for the execution of any of the purposes of this act; every such person so refusing or otherwise offending against this act shall forfeit the sum of two hundred pounds, to be recovered in the superior Court of Judicature of the island of Newfoundland, or in the superior Court of Judicature of the colony or settlement within or near to which such offence shall be committed, or by bill, plaint or information in any of his Majesty's Courts of Record at Westminster; one moiety of such penalty to belong to his Majesty, his heirs and successors, and the other moiety to such person or persons as shall sue or prosecute for the same: Provided always, that any such suit or prosecution, if the same be commenced in Newfoundland, or in any other colony or settlement, shall be commenced within three calendar months; and, if commenced in any of his Majesty's Courts at Westminster, within twelve calendar months from the time of the commission of such offence.

Penalty.

Limitation of prosecution.

# GENERAL INDEX.

# INDEX.

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